



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9VAC25-630
<b>Regulation title</b>	Virginia Pollution Abatement (VPA) General Permit Regulation for Poultry Waste Management
<b>Action title</b>	Develop requirements that will address concerns regarding transfer and off-site management of poultry waste in the Commonwealth.
<b>Final agency action date</b>	
<b>Document preparation date</b>	9/22/09

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The State Water Control Board is amending the existing Virginia Pollution Abatement (VPA) Permit Regulation for Poultry Waste Management in order to establish requirements for end-users of poultry waste to ensure that poultry waste is being used in a manner in which state waters are being protected and nutrients losses are being reduced and that these reductions can be measured. The proposed amendments include provisions regarding transferred off-site poultry waste used for land application by another entity other than the poultry grower. These provisions will establish end-user requirements such as: land application record keeping, poultry waste storage, land application timing and rates, land application buffer requirements. These provisions will also include the option of coverage under a general permit for a poultry waste end-user or poultry waste broker if non-compliance with the requirements of the proposed technical regulations found in 9VAC25-630-60, 9VAC25-630-70 and 9VAC25-630-80 is determined. Changes have been made since the proposal. They include (i) returning the threshold which triggers recordkeeping to 10 or more tons and (ii) removing certain recordkeeping and annual reporting requirements in sections 50, 60 and 70.

Concerns have been expressed by the public, legislature and executive branch that additional safeguards are necessary to ensure that poultry waste that leaves the site and control of the permitted confined poultry feeding operations for land application are managed, applied and stored in a manner that is protective of water quality.

Currently, the VPA General Permit Regulations for Poultry Waste Management (9VAC25-630-10 et seq.) require that poultry waste applied on lands owned by the permitted owner/operator of a confined poultry feeding operation be done so in accordance with a nutrient management plan written by a planner certified by the Virginia Department of Conservation and Recreation (DCR). Permitted operations are inspected annually to ensure that poultry waste is stored, applied, and otherwise managed according to the regulations.

However under the current regulations, poultry waste that is transferred off-site is only required to be accompanied by waste analysis information and a fact sheet (developed by DEQ and DCR) that provides the recipient with general provisions regarding the storage, management and application of the poultry waste. The end-user must acknowledge receipt of the fact sheet by signing a separate "Poultry Waste Transfer Records" sheet. Maintenance of records, including the date and amount of the transfer, zip code of the location receiving the off-site poultry waste and nearest stream or waterbody, is the requirement of the owner/operator of the confined poultry feeding operation (or third-part broker if one was involved in the transaction). Records must be made available to DEQ personnel upon inspection of the confined poultry feeding operation. For off-site application of poultry waste, the present regulation does not require records of 1) the amount of waste received by a single farm, 2) whether or not the poultry waste will be applied in accordance with a nutrient management plan, 3) soil test levels on receiving fields, 4) timing of applications, or 5) a description of receiving crops.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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The State Water Control Board during their regular meeting on October 26, 2009, voted to adopt the final amendments to the Virginia Pollution Abatement General Permit for Poultry Waste Management as presented and recommended by Department of Environmental Quality staff.

### Public comment

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

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Written comments were submitted over 600 citizens and organizations: A summary of comments and agency responses are provided in the preceding pages.

## SUMMARY OF COMMENTS RECEIVED & RESPONSES TO COMMENTS SEPTEMBER 2009

### GENERAL COMMENTS

#### GC-1 SUBJECT: SUPPORT FOR AMENDMENTS ADDRESSING LAND APPLICATION AND STORAGE REQUIREMENTS

**COMMENT:** The proposed regulations place important storage, setback, and land application requirements on the "end-users" of poultry litter as fertilizer. We urge you to approve these regulations as a reasonable and appropriate approach for ensuring that poultry litter continues to be used as an effective fertilizer in a manner that safeguards our local waterways.

**COMMENTERS:** See table 1 in Appendix I

**RESPONSE:** DEQ acknowledges the support. *No changes are being proposed to address this comment.*

#### GC-2 SUBJECT: WATER QUALITY PROTECTION

**COMMENT:** Comments were received in support of the proposed amendments because they provide a mechanism for additional water quality protection.

**COMMENTERS:** See table 2 in Appendix I

**COMMENT:** This would include measures to keep wastes from 1) leaching into waterway run-off (following unrestricted waste storage or distribution over agricultural/other land surfaces) or 2) being taken up by (edible aquatic/land animals or plants).

**COMMENTER:** Dr. Patricia M. Hilgard

**COMMENT:** Much of the agricultural nutrient pollution that has caused excessive algal growth and oxygen deprivation in Virginia's rivers and the Bay has occurred in our own lifetimes. We owe it to the present and future generations of user's of Virginia's waterways to take serious, practical steps to prevent additional damage, and to help restore the river and Bay waters to their former clarity, beauty, and biological productivity. Poultry farmers must comply with the state's water quality protections when they use poultry litter on their farms. It only makes sense that poultry waste brokers and end-users should also abide by the water quality protections when the litter is transferred off-site. This regulation takes appropriate and commonsense steps that will help protect our state's rivers and the Chesapeake Bay. I strongly support the proposed changes to Virginia's poultry waste regulations, and urge you to approve them.

**COMMENTER:** Charles Rories

**COMMENT:** On behalf of the Chesapeake Bay Foundation, I am writing to urge the State Water Control Board to approve the proposed changes to the Virginia Pollution Abatement (VPA) General Permit Regulation for Poultry Waste Management that include land application and storage requirements for end-users of poultry litter. These regulations are critical to ensuring that the poultry litter transported off permitted poultry

growing operations to end-users is stored and land applied in a manner that is protective of water quality. The proposed changes are also critical to achieving Virginia's Chesapeake Bay restoration goals and are considered critical component for achieving Virginia's 2011 milestone commitment to reduce nitrogen and phosphorus loadings to the Bay by 2.4 million pounds of nitrogen and 435,000 pounds of phosphorus.

**COMMENTER: Kristen J. Hughes Evans, Virginia Staff Scientist - Chesapeake Bay Foundation**

**COMMENT:** I am writing in support of the proposed changes to the VPA General Permit Regulations for Poultry Waste Management. I believe these changes will result in an increase in appropriate land application practices on the part of end-users.

**COMMENTER: Becky Barlow, Poultry Litter Market Marker**

**RESPONSE:** DEQ acknowledges the support. ***No changes are being proposed to address this comment.***

**COMMENT:** The land-application of poultry litter should be banned in the watersheds of bodies of water that violate the Clean Water Act and are formally impaired because of high fecal coliform bacterial levels, especially where harvesting of shellfish is prohibited for that reason.

**COMMENTER: Lynton Land**

**RESPONSE:** Multiple restrictions included in the proposed regulation serve to protect state waters from additional pathogen impairments. These restrictions include application rates, application timing, land application buffers, storage location, storage surface and storage covers. ***No changes are being proposed to address this comment.***

**COMMENT:** We believe the proposed buffer between waste sites and water supplies should be extended from 100 feet to 200 feet.

**COMMENTER(S): Don Sims, Float Fisherman of Virginia  
Bill Tanger, Friends of the Rivers of Virginia**

**RESPONSE:** A 100 foot buffer between poultry waste storage locations and water bodies is consistent with the requirements for the permitted poultry grower. This buffer requirement has been in place since the inception of the poultry waste management regulatory program in 2000. Implementation of the 100 foot buffer, combined with the ground conditions and cover requirements have proven to be effective measures to protect surface and ground water, as supported by annual inspections of sites maintained by permitted poultry growers. ***No changes are being proposed to address this comment.***

**COMMENT:** Comments were received regarding improving the condition of polluted rivers and ensuring the healthy streams remain pristine by requiring litter application setbacks from sensitive environmental features and streams, soil testing to guide application rates, application close to crop growing season, and better litter covering practices.

**COMMENTER: See table 6 in Appendix I**

**RESPONSE:** The agency believes that the technical requirements contained in section 9VAC25-630-80 will adequately address concerns regarding appropriate storage and

agronomic land application of poultry waste. ***No changes are being proposed to address this comment.***

**COMMENT:** Our concerns must not only be with the nutrients but with the bacterial impact, which I think supports DEQ's plan in these proposed regs to reduce the threshold from 10 tons to 5 tons. I acknowledge the State is short of money but I don't think that should stop trying to do good things. I support the proposed regulations.

**COMMENTER:** Robert Spiller

**RESPONSE:** Multiple restrictions included in the proposed regulation serve to protect state waters from additional pathogen impairments. These restrictions include application rates, application timing, land application buffers, storage location, storage surface and storage covers. DEQ acknowledges the support. ***No changes are being proposed to address this comment.***

**COMMENT:** We are concerned that the State Water Control Board will approve a regulation for the purpose of improving water quality for which agriculture will not receive any quantifiable credit for either reducing potential or actual non-point pollution let alone improving water quality as a result of regulatory implementation. How much reduction in nitrogen and phosphorus runoff does DEQ estimate will occur? If a pollution reduction occurs how will it be quantified in the Chesapeake Bay and other watershed modeling? All end-users will be required to adhere to the same proposed storage, buffer and application timing requirements. End-users that implement a nutrient management plan for poultry waste utilization should obviously receive credit. End-users that implement one of the other proposed options in many cases will actually apply fewer crop nutrients and should receive credit for the nutrient reduction as well. If pollution reduction can not be estimated or does not occur, then why is DEQ recommending the proposed?

**COMMENTER:** Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation

**RESPONSE:** This regulatory action is a compromise between requiring all users to implement a nutrient management plan (nmp) and allowing the utilization of more flexible options for land application. When an end-user utilizes an nmp written by a certified nutrient management plan writer, the nutrient reduction will be credited in the watershed models and ultimately towards non-point source reduction goals. The reduction credit will depend on how many end-users will utilize the nmp option in the technical requirements. ***No changes are being proposed to address this comment.***

**COMMENT:** We urge the State to adopt proposed amendments that will improve the quality of our waters in Virginia.

1. approval of the contents of the NMP is a critical aspect of the proper management of the waste. Therefore, the state should adopt detailed criteria for approval of the NMP, and the proposed criteria should be subject to public comment.
2. the monitoring frequency can be increased - frequent monitoring should be spelled out

**COMMENTER:** Leslie Mitchell Watson, Director - Friends of the North Fork of the Shenandoah River

Margaret Lorenz, Friends of the North Fork of the Shenandoah River

**RESPONSE:** DEQ acknowledges the suggestions and adds clarification that a nutrient management plan approved by VA DCR is only required of the permitted entity, and a nutrient management plan is one option for an end-user to determine the application rate. The proposed amendments intend to support water quality which supports beneficial uses of the river. ***No changes are being proposed to address this comment.***

**COMMENT:**

1. Amendments to the regulation will close a large environmental loophole
2. Will address problems associated with concentrated animal agriculture
3. Pollution problems associated with improper application of poultry waste are well-documented
4. Current regulations are not adequately protective of land and water.
5. Improper land application of poultry waste can contribute to water quality problems.
6. Annual manure phosphorus production in the Shenandoah Valley exceeded annual crop phosphorus uptake.
7. Poultry litter is an imbalanced fertilizer, in that when it is applied to meet crop nitrogen needs it provides more phosphorus than the crop needs. If litter is continually applied to meet N needs, phosphorus will build up and science shows that high soil phosphorus levels and poultry litter application result in increased phosphorus concentrations in runoff.
8. Litter is more economical to use than commercial fertilizer because of the abundance and low cost.
9. Phosphorus levels are very high in many soils that receive poultry litter applications in the Shenandoah Valley. Crops could be grown in these soils without any supplemental phosphorus.

**COMMENTER:** Jeff Kelble - Shenandoah Riverkeeper

**RESPONSE:** DEQ acknowledges the suggestions. The proposed amendments intend to support water quality which supports beneficial uses of the river. ***No changes are being proposed to address this comment.***

**GC-3 SUBJECT: WATER QUALITY AND RECREATIONAL USES**

**COMMENT:** Comments were received regarding support of the proposed amendments for reasons of water quality and/ or recreational uses.

**COMMENTERS:** See table 3 in Appendix I

**RESPONSE:** DEQ acknowledges the support. The proposed amendments intend to support water quality which supports beneficial uses of the river. ***No changes are being proposed to address this comment.***

**GC-4 SUBJECT: GENERAL SUPPORT**

**COMMENT:** Comments were received regarding support of the proposed amendments.

**COMMENTER(S):** See table 4 in Appendix I

**COMMENT:** I support stringent regulations of Poultry Litter used as a fertilizer.

**COMMENTS:** John C. Barber, Sr.

**COMMENT:** DEQ staff's efforts to create a workable regulatory proposal are commendable.

**COMMENTS:** Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation

**COMMENT:** We applaud the Honorable L. Preston Bryant, Secretary of Natural Resources, and the Virginia Department of Environmental Quality for establishing an inclusive process to develop these proposed changes.

**COMMENTS:** Kristen J. Hughes Evans, Virginia Staff Scientist - Chesapeake Bay Foundation

**COMMENT:** VPF commends DEQ for its participatory approach to develop the proposed regulation. VPF appreciated the opportunity to serve on the agency's Technical Advisory Committee. Furthermore, VPF acknowledges that the proposed regulation reflects input offered by VPF and other agricultural representatives on the TAC.

**COMMENTS(S):** Hobey Baughan, President - Virginia Poultry Federation

**COMMENT:** The DEQ staff are to be commended and supported for an excellent and comprehensive set of proposed regulations.

**COMMENTS(S):** Don Sims, Float Fisherman of Virginia  
Bill Tanger, Friends of the Rivers of Virginia

**COMMENT:** We do commend DEQ for working diligently to find consensus between all interested parties on a number of issues.

**COMMENTS:** Katie K. Frazier, Vice President - Public Affairs

**COMMENT:** We want to thank the staff of the Department of Environmental Quality (DEQ) for their work on this proposed regulation. JRA has been involved in the Technical Advisory Committee (TAC) process through which these regulations have been developed. We believe that process was constructive and important for allowing the various parties to represent their interests. Because we believe that these proposed regulations reflect a balancing of interests between the concerns of chicken waste producers, brokers, and end-users and the paramount need to significantly enhance protections for water quality and human health, we support them in their present form and ask the State Water Control Board to adopt them. However, should the DEQ staff recommend changes to the draft regulatory proposal that would weaken these protections, that balance would need to be re-drawn.

**COMMENTS:** David Sligh, Upper James Riverkeeper - James River Association

**COMMENT:** I want to commend the DEQ for these well vetted, thoughtful, and balanced proposals for regulating the VA chicken litter market. We can no longer afford to leave the water quality of our state entirely up to market forces and conventional practices, as well-intentioned as the large majority of VA farms are. The natural tendency to over-use fertilizer is well attested by decades of examples. Thank you for your careful and conscientious efforts to be wise stewards of our precious and shared state resources.

**COMMENTS:** Kent Sensenig

**COMMENT:** I do appreciate DEQ efforts and I am a 100% for water quality. As a farmer I feel it is our job to be good stewards of the land that the good Lord has blessed us with.

**COMMENTER:** Will Sanderson, Cumberland County Poultry Grower

**RESPONSE:** DEQ acknowledges the support. *No changes are being proposed to address this comment.*

**GC-5 SUBJECT: NOT SUPPORTIVE**

**COMMENT:** These proposals appear to be a case of trying to fix something that isn't broken. Current regulatory requirements appear to be doing a more than adequate job of protecting the environment while still maintaining poultry litter as a safe and affordable form of fertilizer. Please make no change to these regulations.

**COMMENTER:** William Cole, Amelia County Poultry Grower

**COMMENT:** As a poultry grower and a small family-farm owner, I would strongly urge both SWCB and DEQ to NOT impose additional amendments to the Virginia Pollution Abatement Regulation for Poultry Waste Management on poultry litter end users. Thank you for your consideration in helping the small American farm to live on.

**COMMENTER:** Charles Wenger

**COMMENT:** I feel it's a shame that a few irresponsible growers can cause regulations to increase that ultimately affect every person involved in poultry production. I feel like the main is being pointed to poultry producers and should be looked more to homeowners that are over applying fertilizers on there yards; which I feel is doing more damage to Chesapeake Bay than the poultry producers.

**COMMENTER:** Will Sanderson, Cumberland County Poultry Grower

**COMMENT:** The biggest concerns I have as a broker is, DEQ applying this law statewide, when I do not think poultry litter, the application of poultry litter is a problem statewide. I don't think the State as a whole needs to have a nutrient management plan or be regulated as stringently with the tonnage application.

**COMMENTER:** Matt Long

**RESPONSE:** The DEQ looked at other options, to address the issues and concerns regarding poultry waste that is transferred and managed off-site, such as:

1. developing a new Virginia Pollution Abatement (VPA) Permit to cover the end-user of the poultry waste;
2. using the Fact Sheet as a permit which would allow for a simpler approach to the regulatory process for the end-user as compared to the individual Virginia Pollution Abatement Permit approach; or
3. taking no action and continue to rely on the existing voluntary approaches such as the phytase feed initiative, the poultry litter transport incentive program and the "litter hotline"

All of the alternatives were considered by the technical advisory committee and DEQ staff. The most efficient and widely accepted option was to utilize the existing VPA general permit regulation for poultry waste management through technical requirements

that do not require the end-user to obtain a permit. ***No changes are being proposed to address this comment.***

**GC-6 SUBJECT: FISH KILLS - POULTRY WASTE STORAGE AND LAND APPLICATION**

**COMMENT:** Comments were received regarding the fish kills and their link to poultry waste utilization.

**COMMENTER(S):** See table 5 in Appendix I

**COMMENT:** Severe pollution problems have been caused by mishandling of these wastes and this must be stopped. We face very serious problems in areas where significant land application of poultry waste is occurring, including on-going findings of diseased, malformed, and dying fish. We acknowledge that no certain link between poultry waste and these problems has been shown but these land application activities continue to be one suspected contributor to the problem.

**COMMENTER:** David Sligh, Upper James Riverkeeper - James River Association

**RESPONSE:** The efforts of the Virginia fish kill task force focused specifically on arsenic as a possible cause of recent fish kills in the Shenandoah Valley, an area with a high frequency of poultry litter applications. No definitive evidence linking arsenic (or poultry litter) to the fish kills could be found. Research has shown that misapplied poultry litter can result in water quality problems, primarily related to nutrients and pathogens, thus those are the focus of the regulatory requirements. Further, many poultry companies have ceased using arsenical compounds in the feed. The storage requirements included in the proposed regulation will protect surface and ground water from leaching and runoff. ***No changes are being proposed to address this comment.***

**COMMENT:** I have been alarmed over the fish kills and increasing algae blooms on the river, so I want to speak in favor of these regulations. I think it's very important that we do a better job of protecting our waterways and protecting our river. I wanted to say a thank you to the agricultural community up river from us, I know you guys have been working for a number of years putting in best management practices and doing the right thing, as far as water quality is concerned we appreciate that it is an economical challenge for you.

**COMMENTER:** John Gibson - Down River Canoe Company

**RESPONSE:** DEQ acknowledges the support. ***No changes are being proposed to address this comment.***

**GC-7 SUBJECT: ARSENIC**

**COMMENT:** The regulations should specify an upper limit for arsenic concentration in the poultry waste, no higher than 75 ppm, and should explicitly state that leaching and runoff from stored piles of litter is absolutely prohibited.

**COMMENTER:** Lynton Land

**COMMENT:** We need to cease the use of Roxarsone in chicken feed that results in the presence of arsenic in chicken waste

**COMMENTS: Brian Collins**

**COMMENT:** Contaminants analyzed should also include commonly found endocrine disruptor chemicals such as arsenic.

**COMMENTS: Bob Luce**

**COMMENT:** I am an environmental toxicologist and risk assessor. I have been working on this and allied areas for some years. It is BEYOND IMPORTANT to enact rules to manage poultry wastes in and around VA. Did you know that, in addition to the obvious contaminants in chicken waste, there is also a load of arsenic (used in feed to keep the fly population at bay)?

**COMMENTS: Dr. Patricia M. Hilgard**

**COMMENT:** Add arsenic to the list of pollutants that are monitored in the wastes.

**COMMENTS: Leslie Mitchell Watson, Director - Friends of the North Fork of the Shenandoah River**

**Margaret Lorenz, Friends of the North Fork of the Shenandoah River**

**RESPONSE:** Arsenic is commonly found in soil and water environments due to natural geological processes as well as human activity. While research is ongoing, there is not an abundance of evidence to indicate that poultry litter applications made using appropriate BMPs (as included in the proposed regulation) will raise arsenic concentrations in soil sufficiently over background levels to pose water quality problems. Further, the efforts of the Virginia Fish Kill Task Force focused specifically on arsenic as a possible cause of recent fish kills in the Shenandoah Valley, an area with a high frequency of poultry litter applications. No definitive evidence linking arsenic (or poultry litter) to the fish kills could be found. Research has shown that misapplied poultry litter can result in water quality problems, primarily related to nutrients and pathogens, thus those are the focus of the regulatory requirements. Further, many poultry companies have ceased using arsenical compounds in the feed. The storage requirements included in the proposed regulation will protect surface and ground water from leaching and runoff. ***No changes are being proposed to address this comment.***

#### **GC-8 SUBJECT: LITTER MARKET AND STRANDING**

**COMMENT:** My hope as both a farmer and a legislator is that we will not make these regulations so over burdensome that it will completely destroy the litter market that we have here in the area. For some folks that are smaller operations my fear is that if these regulations are over burdensome, they will just say it's a lot easier to go co-op and use commercial fertilizer and they will just completely abandon their plan of using poultry litter.

**COMMENTS: Matthew Lohr - Member of Virginia House of Delegates and Rockingham County Poultry Producer**

**COMMENT:** One big concern is the 80% of manure that is moved offsite from the 894 permitted poultry farms, if the process the technical regulations or coverage under the permit for the end users and brokers is too cumbersome they may decide they are not going to fool with chicken manure that would strand it on the poultry farms and our growers will have more headaches and more difficulties in properly handling the manure and the state could end up finding itself with more water quality problems because this

manure on the permitted farms has no place to go and its not going to be finding a home on non-permitted farms or in the hand of brokers. Poultry manure, I am told by those who use it is more difficult to land apply than commercial fertilizer and if the end users have to go through the government regulations or comply with the technical regulations or if they don't do that comply with permit coverage they may decide I am going to use easier to apply, easier to handle, less cumbersome, less regulated commercial fertilizer and poultry manure that create problems for our growers.

**COMMENTER: Bill Satterfield, Executive Director - Delmarva Poultry Industry, Inc.**

**COMMENT:** We remain concerned that regulating end-users of poultry litter, when commercial fertilizer is not regulated, could harm the market for litter, possibly stranding litter on poultry farms, which will economically hurt poultry farmers. It is critical that DEQ and the SWCB understand the magnitude of the "stranding" problem and consider the ramifications of moving forward with this proposal without a plan to address this problem through some alternative use of poultry litter. DEQ records show that regulated poultry farmers transfer nearly 250,000 tons of litter to other farmers. On average, poultry farmers receive about \$10 per ton for their litter. The proposed regulation will restrict the acreage available for poultry litter application in the Commonwealth. Without some alternative use to maintain demand for litter, the value of litter will quickly diminish and litter could become a liability for farmers. The average poultry farmer could lose thousands of dollars in income and potentially incur thousands of dollars in additional costs.

**COMMENTER(S): HobeY Baughan, President - Virginia Poultry Federation  
Roger Hatcher, President - Cumberland County Farm Bureau**

**COMMENT:** While we strongly urge DEQ to maintain these previously outlined provisions in the regulation, there continue to be concerns within our membership on a few key issues including; the potential "stranding" of poultry litter on farms and a lack of "safety valve" when and if such a situation should develop, and the overall economic impact on poultry farmers, should stranding occur. These end-user regulations could potentially lead to "stranding" of poultry litter on poultry farms due to a decreased market demand. Litter that is stranded on poultry farms with no options for application or removal may lead to other water quality and environmental impacts, in addition to the negative economic impacts for poultry producers.

**COMMENTER: Katie K. Frazier, Vice President - Public Affairs**

**COMMENT:** Given increasing fertilizer prices (for nitrogen, phosphorus, and potash), poultry litter is a highly sought after commodity, and many Virginia farmers who could use poultry litter are unable to find available sources. While many farmers around the Commonwealth are seeking poultry litter, farmers in high-density production areas continue to dominate the end-user market.

**COMMENTER: Kristen J. Hughes Evans, Virginia Staff Scientist - Chesapeake Bay Foundation**

**COMMENT:** Just don't overburden the farmer and strand litter to where we can't do our jobs and grow food for this country.

**COMMENTER: Will Sanderson, Cumberland County Poultry Grower**

**COMMENT:** Concerned that regulation will cause people to use commercial fertilizer, market is good now.

**COMMENTER: Mark Deavers - Poultry Broker  
Winston Turner**

**COMMENT:** Concerned that regulation will cause stranding of litter on growers farms.

**COMMENTER: Jeff Good**

**COMMENT:** I would like to have a say in where I can sell my litter, this is going to affect the people buying chicken litter as fertilizer; this will help my [anaerobic digester] project, but I don't think I want to stress it that way.

**COMMENTER: Donald Bishop, Cumberland County Poultry Grower and  
Cumberland County Anaerobic Digester Project**

**COMMENT:** This proposal will cause stranding of poultry litter on the farms where it may not be able to be used on the farm due to the limitations of the nutrient management plans.

**COMMENTER: Bruce Holland - Poultry Grower**

**COMMENT:** This proposal will cause stranding of poultry litter on the farms and loss of income.

**COMMENTER: Freddy Holland - Poultry Grower**

**COMMENT:** The technical requirements proposed for end users will represent a change. Many of our elderly members resist any change. Our concern is that people will stop using litter which is regulated to un-regulated sources of fertilizer.

**COMMENTER: Rick Shiflet, Land Use Committee - Augusta County Farm  
Bureau Federation**

**COMMENT:** Farm Bureau is concerned that this proposed regulation will make end-users reluctant to continue to use poultry litter because of the added bureaucracy and fear of the unknown of being targeted by this proposal. This proposal will disrupt current poultry waste markets and will result in some poultry litter being stranded on poultry farms that need to transfer the waste. Many end-users were reluctant [to] use poultry litter when 9VAC25-630 was originally promulgated out of concern the new regulation would impact their operations even though litter was considerably cheaper than it is now and they only needed to follow DEQ's fact sheet guidelines for using poultry litter.

**COMMENTER: Wilmer N. Stoneman, III, Associate Director - Government  
Relations - Virginia Farm Bureau Federation**

**COMMENT:** VDACS is concerned that the adoption of the proposed amendments could have serious, unintended economic consequences for Virginia's farming communities. The proposal will severely limit the movement of poultry waste off poultry farms and that these restrictions will have unintended environmental implications. The board needs to consider the full economic impact that the proposed changes will have on Virginia's agricultural communities.

**COMMENTER: Todd Haymore, Commissioner - VDACS**

**COMMENT:** Our government continues to impose regulations that have a financial burden on farmers with little or no assistance. At a time when our economy is weak and the government is buying out banks and auto companies there is little help for farmers! Fertilizer prices are high. The land application of poultry litter is a win for the poultry grower and the farmer as fertilizer. These regulations would devalue poultry litter and

limit its use. Where would the supporters of these regulations like to see the litter go?  
To local landfills?

**COMMENTER: Jackie and Howard Easter - Amelia County Poultry Grower**

**COMMENT:** If end users were to feel that these requirements were burdensome, it could result in a backlog of litter left on farms. What affect on watersheds in TMDL areas would result? Will these changes cause a switch in the use of organic nutrients that are now regulated to the use of inorganic nutrients that are not regulated?

**COMMENTER: Headwaters Soil and Water Conservation District - Land Use Committee**

**COMMENT:** We feel that as good stewards of our land we are already doing an adequate job and that additional burdens imposed on the end user of litter will cause them to abandon chicken litter and opt for other forms of fertilizers. This then causes a "stock pile" effect on the family farm with no place to move the litter. This will drive litter profits down to where growers will be unable to offset their costs in dealing with the litter. Believe me, we have already experienced some of these hardships ourselves as poultry growers and feel that additional requirements will make it harder and harder for us to move poultry litter as well as there not being a cost-effective method to do so.

**COMMENTER: Charles E. Wenger, Poultry Grower**

**COMMENT:** If these additional regulations are enacted, I foresee growers having a more difficult time of distributing litter; which may mean more concentrated areas of litter storage. Furthermore, I foresee less productive pastures and hayfields due to the lack of nutrients and organic matter. The agriculture industry is currently handling, storing, and applying poultry litter in an environmentally friendly manner that is both efficient and productive. Please reconsider your proposals before enacting needless regulations that will have impacts across the agriculture community.

**COMMENTER: Henry E. Wood, Jr.; President - Buckingham County Farm Bureau**

**COMMENT:** Keep the regulations as easy as possible on the end users, because by and large, farmers are frugal individuals and they are not going to spend more money than they have too. Litter is a very valuable asset, a very valuable fertilizer ingredient works well in farming operations and if we get too many regulations on the end users, I am afraid we going to see litter pile up.

**COMMENTER: Reid Mackey - Poultry Waste Broker/ Hauler**

**COMMENT:** My concern is that these proposed additions to the regulations could eventually make using poultry litter so much trouble for the end user that I will not be able to sell the portion of the litter that exceeds what my nutrient management plan will allow me to use in my own farming operation. If I am to continue to operate as a poultry grower and can't get rid of the litter what would DEQ propose I do with the litter?

**COMMENTER: William Cole, Amelia County Poultry Grower**

**COMMENT:** Over the years we have found it hard to move our litter, but now with the price of fertilizer so high more farmers are using the litter. We do not want to discourage this use by placing so many regulations on the end user. You will find most farmers take pride in their operation & the land tells you what it needs by the crop it produces.

**COMMENTER: Gayle & Bill Rogers, Chesterfield County Poultry Grower**

**RESPONSE:** DEQ acknowledges the economic benefit to use poultry waste as fertilizer. Some farms that have been using poultry litter and have high soil test phosphorus may be negatively impacted by the cost of needing to purchase commercial nitrogen. However, due to the cost of commercial fertilizer, there are many farmers that have desired to use poultry waste but have not been able to do so because it is in limited supply. The proposed regulations will require that more poultry waste be moved off farms that have historically received high amounts, resulting in an additional supply. The economic impact to the farms that can no longer use poultry waste will be offset by the economic benefit to the farms that can now obtain the material. Due to the demand, it is unlikely that litter would accumulate on poultry farms that would result in environmental consequences. ***No changes are being proposed to address this comment.***

**GC-9 SUBJECT: AG STEWARDSHIP ACT**

**COMMENT:** Ag Stewardship Act in Virginia which is in place to address the bad Actors we have across the State, most farmers, almost all farmers are very responsible citizens on how they apply their litter and how they apply their fertilizers but there are some bad actors out there; and it would be my hope that the State would beef up that program, put more funding into that and allow the Ag Stewardship program to take care of those folks who truly are in violation instead of imposing more burdens on everyone else.

**COMMENTER:** **Matthew Lohr - Member of Virginia House of Delegates and Rockingham County Poultry Producer**

**COMMENT:** VDACS does not see a need or basis for the proposed amendments that would address the off-site management of poultry waste. In the almost thirteen year existence of VDACS' Agricultural Stewardship Act program, we have handled very few complaints involving the storage and/or land application of poultry litter by another entity other than the poultry grower. With the exception of one unique and isolated case, poultry litter complaints we have received have been resolved fairly easily.

**COMMENTER:** **Todd Haymore, Commissioner - VDACS**

**COMMENT:** We believe that the Agricultural Stewardship Act sufficiently addresses any pollution problems related to poultry litter "end-users."

**COMMENTER(S):** **Hobey Baughan, President - Virginia Poultry Federation  
Roger Hatcher, President - Cumberland County Farm Bureau**

**COMMENT:** Poultry litter end-users are already subject to enforcement under the Ag Stewardship Act. If end-users are truly causing a water quality problem they should be reported to VDACS for any alleged violation. There is no need to have any additional regulation.

**COMMENTER:** **Freddy Holland - Poultry Grower**

**COMMENT:** The Ag Stewardship exists to investigate and address complaints of water quality problems that may arise from farming activities that may be performed inadequately or incorrectly.

**COMMENTER:** **Bruce Holland - Poultry Grower**

**COMMENT:** A regulatory or agency guidance proposal that aids DEQ in collecting the currently required transfer information without additional management and enforcement requirements for growers, brokers and end-users would be welcomed. The Agricultural

Stewardship Act is suitable for addressing and enforcing improper and inadequate poultry waste utilization and storage among persons other than permitted poultry growers. The Agricultural Stewardship Act is a complaint driven program that includes on-site investigations, and education component for all complaints, seeks corrective action via implementation of a VDACS approved plan, enforcement provisions and an appeals process for both the complainant and the farmer.

**COMMENTER: Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation**

**COMMENT:** The Ag Stewardship Act is designed to address bad actors.

**COMMENTER: Headwaters Soil and Water Conservation District - Land Use Committee**

**COMMENT:** The Agricultural Stewardship program is not equipped to address the problems associated with improper land application of poultry waste. It is a complaint driven process and excess application may not generate a complaint because it is usually not visually apparent.

**COMMENTER: Jeff Kelble - Shenandoah Riverkeeper**

**RESPONSE:** The DEQ regularly receives complaints regarding the application or storage of transferred poultry waste. In most cases, once the complainant learns there are no regulations governing transferred waste, they do not pursue the complaint any further. Also, the Agricultural Stewardship program is a complaint driven process, and over-application of manure is not a practice that is readily apparent that would necessarily generate a complaint. ***No changes are being proposed to address this comment.***

#### **GC-10 SUBJECT: SCIENCE DOCUMENTING NEED FOR AMENDMENTS**

**COMMENT:** The agency has not adequately documented and quantified the contribution of transferred poultry litter to nutrient runoff. The proposal is based largely on perceptions about poultry litter, not hard science revealing the extent to which nitrogen and phosphorus from litter enter Virginia streams, rivers, and the Chesapeake Bay. We acknowledge some nutrient loss from transferred poultry litter, but question its contribution relative to other larger sources.

**COMMENTER: Hobey Baughan, President - Virginia Poultry Federation  
Roger Hatcher, President - Cumberland County Farm Bureau**

**COMMENT:** We ask if these changes are the result of short falls in the existing system. Are these proposed changes backed by good science?

**COMMENTER: Headwaters Soil and Water Conservation District - Land Use Committee**

**COMMENT:** Farm Bureau does not believe that DEQ or any other state entity has adequately documented or quantified an actual water quality problem resulting from poultry waste transfer. DEQ has not documented any enforcement actions regarding transferred poultry waste through its own action or any founded complaints and enforcement actions under the Agricultural Stewardship Act.

**COMMENTER: Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation**

**COMMENT:** None of these proposed regulations seem to be supported by evidence requiring such.

**COMMENTER:** Henry E. Wood, Jr.; President - Buckingham County Farm Bureau

**COMMENT:** I am an end user of poultry litter and have found it to be viable form of fertilizer. Those of us who farm are finding it very difficult to continue our farming operations due to the escalating expenses and conforming to all the regulations that have been imposed on us. We certainly do not need additional regulations and especially the ones being considered when I am told there have been no cases documenting the need for such. I am respectfully requesting that you consider the struggles the farmers are currently having just to remain in business and will not add additional regulations which in turn will mean more work and expense.

**COMMENTER:** C. Wayne Keener

**COMMENT:** My understanding is that there have been few if any documented cases of environmental contamination due to incorrect application of poultry litter.

**COMMENTER:** William Cole, Amelia County Poultry Grower

**COMMENT:** Speaking from a poultry grower's standpoint for over 18 years, it is becoming more and more difficult on a daily basis to operate our family farm. We are slowly being "choked out" by rules and regulations impacting us both emotionally as well as economically while there have been no documented cases of poultry litter being mishandled in a way that diminishes water quality.

**COMMENTER:** Charles Wenger, Poultry Grower

**RESPONSE:** Research has shown that misapplied poultry litter can result in water quality problems, primarily related to nutrients and pathogens, thus those are the focus of the regulatory requirements. ***No changes are being proposed to address this comment.***

**COMMENT:** Why is it always assumed that farmers do not care about clean water?

**COMMENTER:** Jackie and Howard Easter - Amelia County Poultry Grower

**COMMENT:** Once again agriculture is being singled out as the culprit for any and all water quality problems in the Chesapeake Bay without any actual data to support the renewed allegation.

**COMMENTER:** Freddy Holland - Poultry Grower

**COMMENT:** What is the documented evidence that poultry litter end-users are enough of a problem to justify creating a regulation?

**COMMENTER:** Bruce Holland - Poultry Grower

**COMMENT:** We ask you review the proposed technical amendments to ease any change that would result.

**COMMENTER:** Rick Shiflet, Land Use Committee - Augusta County Farm Bureau Federation

**RESPONSE:** DEQ regularly receives complaints regarding the application or storage of transferred poultry waste, making the agency aware that some farmers do not follow

appropriate best management practices (BMPs). Research has shown that misapplied poultry litter can result in water quality problems. There is inadequate data to quantify the number of farmers properly managing poultry waste versus those that follow appropriate BMPs. Thus the proposed regulations were developed in such a way as to cause minimal disruption to those farmers that are properly managing poultry waste. ***No changes are being proposed to address this comment.***

**GC-11 SUBJECT: REGULATE ALL SOURCES OF NUTRIENTS**

**COMMENT:** Tyson is a supporter of Nutrient Management regulations. In fact, we strongly encourage all independent poultry producers that contract with Tyson to obtain a Nutrient Management Plan (NMP), regardless of whether their local or state regulations require an NMP. VDEQ should include all forms on nutrients (including commercial fertilizer) into this regulation. If nutrients are going to be regulated, then all sources of nutrients should be regulated.

**COMMENTER:** Jamie Burr - Tyson Foods, Inc.

**COMMENT:** Furthermore, these regulations are more stringent than that of commercial fertilizer. It seems that you would be pleased with the utilization of organic sources of nutrients, but your proposed regulations tell otherwise.

**COMMENTER:** Henry E. Wood, Jr.; President - Buckingham County Farm Bureau

**COMMENT:** In many cases, unregulated sources of nutrients will replace litter as a source of nutrients for farmland.

**COMMENTER(S):** Hobey Baughan, President - Virginia Poultry Federation  
Roger Hatcher, President - Cumberland County Farm Bureau

**RESPONSE:** Regulation of commercial fertilizer application rates is not within the scope of § [62.1-44.17:1.1](#). of the Code of Virginia. ***No changes are being proposed to address this comment.***

**GC-12 SUBJECT: MISCELLANEOUS COMMENTS**

**COMMENT:** VFBF is concerned that industry and state efforts to encourage redistribution of poultry litter from areas of potential surplus to nutrient deficit areas will be stymied by additional regulation and unnecessarily raise conservation program costs and divert limited conservation funding from other needed practices. It has taken considerable time and a cost-share program funded by the poultry companies and the Department of Conservation and Recreation to build the current demand for poultry litter.

**COMMENTER:** Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation

**RESPONSE:** The proposed regulations will require that more poultry waste be moved off farms that have historically received high amounts, resulting in an additional supply. The demand for poultry litter as a fertilizer will offset any issues associated with cost-share assistance. Not all farmers that utilize poultry litter will seek cost-share assistance. ***No changes are being proposed to address this comment.***

**COMMENT:** Cruelty to animals needs to be included.

**COMMENTER:** Mary Rose Curtis

**RESPONSE:** Regulation of animal cruelty is not within the scope of § 62.1-44.17:1.1 of the Code of Virginia. ***No changes are being proposed to address this comment.***

**COMMENT:** The burden of treating poultry waste should fall on the large corporations that own the chickens, who have the financial resources to build treatment plants and institute other measures to ensure that poultry waste does not enter into our waters untreated.

**COMMENTER:** George Sorvalis

**RESPONSE:** The responsibilities of the poultry integrators are outlined in § 62.1-44.17:1.1 of the Code of Virginia. Comments are unrelated to the proposed amendments. ***No changes are being proposed to address this comment.***

**COMMENT:** I remain concerned about the on-site disposal of dead poultry during the Avian flu epidemic a few years ago with what appeared to be absolutely no concern for where the diseased birds were buried. As if the diseased birds decomposition wouldn't seep into nearby streams and waters.

**COMMENTER:** Patricia Williams

**RESPONSE:** The Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management prohibits the use of disposal pits for routine disposal of daily mortalities; however this prohibition does not apply to emergency disposal of dead poultry in cases of catastrophic losses which are due to Avian Influenza and other disease outbreaks. The Virginia Department of Agriculture and Consumer Services and the Virginia Solid Waste Regulations mandate the requirements regarding disposal in these cases. During the Avian Influenza outbreak several years ago the Department of Environmental Quality and the Virginia Department of Agriculture and Consumer Services worked closely with the poultry industry to ensure compliance with the regulations. ***No changes are being proposed to address this comment.***

**COMMENT:** The regulations for the land application for poultry litter should be no less stringent than regulations for the land application of sewage sludge. Both kinds of waste are inefficient fertilizers and cause massive nitrogen and phosphorus pollution compared to conventional chemical fertilizers. Animal wastes contain fecal coliform bacteria, and substances such as antibiotics and/or heavy metals that must be regulated so contamination does not occur in the Chesapeake Bay watershed, a body of water formally impaired by EPA.

**COMMENTER:** Lynton Land

**RESPONSE:** The statutory requirements pertaining to regulation of sewage sludge (§ [62.1-44.19:3](#) of the Code of Virginia) differ from those pertaining to poultry waste (§ [62.1-44.17:1.1](#) of the Code of Virginia). These differences are related to the sources, amounts and makeup of potential contaminants in sewage sludge versus poultry waste. Research has shown that misapplied poultry litter can result in water quality problems, primarily related to nutrients and pathogens, thus those are the focus of the regulatory requirements. ***No changes are being proposed to address this comment.***

**COMMENT:** No fee structure is imposed, as is done in 9VAC25-20-146 for the land application of sewage sludge, to reimburse localities for oversight costs and to reimburse the State for implementing the land application program.

**COMMENTS:** Lynton Land

**RESPONSE:** § 62.1-44.15:6.B1. of the Code of Virginia states "...notwithstanding any other provision of law, in no instance shall the Board charge a fee for a permit pertaining to a farming operation engaged in production for market..." **No changes are being proposed to address this comment.**

**COMMENT:** Research should be conducted to investigate the use of poultry waste to generate energy.

**COMMENTS:** Penny Manners

**COMMENT:** If we can make horse and cow manure into fertilizer, we can certainly do the same with chicken waste and, while we're at it, help protect our waterways. Of course, that means the poultry industry will have to collect it, but they could profit by selling it to processors. Virginia needs to look at the possibilities and develop regulations that encourage the reuse of chicken waste.

**COMMENTS:** Pat Dunlap

**COMMENT:** If the Commonwealth moves forward with the regulation, we ask that the state seek to accelerate development of alternative uses of poultry litter and make the effective date of the proposed regulation contingent upon availability of alternative uses.

**COMMENTS(S):** HobeY Baughan, President - Virginia Poultry Federation  
Roger Hatcher, President - Cumberland County Farm Bureau

**RESPONSE:** DEQ is supportive of research efforts, some of which are ongoing, to develop alternative uses for poultry waste where appropriate. **No changes are being proposed to address this comment.**

## **SPECIFIC SECTION COMMENTS**

### **SC-1 SUBJECT: DEFINITIONS/ TERMINOLOGY**

**COMMENT:** The term "waste" indicates that a product no longer has a beneficial use. Poultry litter is an excellent source of nutrients for plant growth and increases soil tilth, therefore should not be considered a waste.

**COMMENTS:** Jamie Burr - Tyson Foods, Inc.

**RESPONSE:** "Poultry waste" is the term used throughout § 62.1-44.17:1.1. of the Code of Virginia, thus it is likewise used in the regulation. **No changes are being proposed to address this comment.**

**COMMENT:** The proposed changes to the General Permit include requiring a poultry grower provide a "fact sheet" if five tons or more of poultry [litter] is transferred to another person. The terminology "fact sheet" is extremely broad and ambiguous. This terminology does not provide direction to a grower as to what is an acceptable "fact sheet." Tyson recommends that specific reference to an acceptable "fact sheet" be

incorporated into the General Permit. For instance, the Department should list specific fact sheets, such as Virginia Cooperative Extension articles. An example of a specific article would be publication # 442-052, "Land Application of Broiler and Turkey Litter for Farming Operations without a DEQ Permit."

**COMMENTER: Jamie Burr - Tyson Foods, Inc.**

**RESPONSE:** The term "fact sheet" is defined in Section 9VAC25-630-10 as "the document that details the requirements regarding utilization, storage, and management of poultry waste by poultry waste end-users and poultry waste brokers. The fact sheet is approved by the department, in consultation with the Department of Conservation and Recreation." The DEQ fact sheet has been in use since the year 2000 under the current regulatory requirements. DEQ will develop a new fact sheet based on changes to the regulation, and there will be only one document that meets the requirements. ***No changes are being proposed to address this comment.***

**COMMENT:** It is unclear as to whether the rate of 1.5 tons is already the "standard rate" or if further action has to be taken by the "board" to determine this amount. If 1.5 tons is already the standard rate, Tyson recommends that 1.5 tons be incorporated into the definition.

**COMMENTER: Jamie Burr - Tyson Foods, Inc.**

**RESPONSE:** Section 9VAC25-630-80.C.1.A of the regulation specifies that the standard rate is 1.5 tons per acre once every three years. No further action is necessary to define this rate. ***No changes are being proposed to address this comment.***

## **SC-2 SUBJECT: TONNAGE THRESHOLD TO TRIGGER RECORDKEEPING**

**COMMENT:** Raise that number at least back to the original 10, personally I would like to see it raised to 15 or 20 because there are a lot of people who are traditional farmers but they have gardens, large gardens, produce areas and even small farms that they do use 10 or 15 or 20 tons poultry litter a year.

**COMMENTER: Matthew Lohr - Member of Virginia House of Delegates and Rockingham County Poultry Producer**

**COMMENT:** Change threshold from 5 tons, personally I would like to see it go up to 15 or 20 but at least leave it at 10.

**COMMENTER: Jeff Good**

**COMMENT:** Take it back up to 10, move it up to 20 or 30.

**COMMENTER: Mark Deavers - Poultry Waste Broker**

**COMMENT:** I feel like 10 tons is a small enough threshold to require in the regulations.

**COMMENTER: Will Sanderson, Cumberland County Poultry Grower**

**COMMENT:** Having a threshold of 5 tons in one year adds additional burden for anyone getting slightly more than gardeners.

**COMMENTER: Henry Wood, Jr., President - Buckingham County Farm Bureau**

**COMMENT:** I am opposed to the reduction of 10 tons to 5 tons as the minimum threshold.

**COMMENTER:** Lareth May, Poultry Grower

**COMMENT:** The 5 ton minimum for regulation is much too low and at least the minimum should remain at 10 tons.

**COMMENTER:** William Cole, Amelia County Poultry Grower

**COMMENT:** VPF opposes the reduction in the minimum threshold for regulation of litter transfers from 10 tons to 5 tons. Ten tons has been adequate as a minimum threshold.

**COMMENTER:** Hobey Baughan, President - Virginia Poultry Federation  
Roger Hatcher, President - Cumberland County Farm Bureau

**COMMENT:** The 5 ton threshold is too low and less than one truckload.

**COMMENTER:** Freddy Holland - Poultry Grower  
Bruce Holland - Poultry Grower

**COMMENT:** The proposed threshold of "5 or more tons" for triggering the proposed regulatory changes is too low and should be changed to "15 or more tons" or left at "more than 10 tons". The proposed threshold volume is equivalent to approximately 3 full-size pick-up loads and less than the amount of litter typically hauled by one poultry litter spreader truck or spreader buggy.

**COMMENTER:** Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation

**COMMENT:** Strongly supportive of the proposed regulations regarding the management, tracking and testing of poultry waste and the use of poultry waste. More specifically, we support the change from a maximum of 10 tons to a new maximum of 5 tons that would require record keeping and reporting of transfers

**COMMENTER(S):** Don Sims, Float Fisherman of Virginia  
Bill Tanger, Friends of the Rivers of Virginia

**COMMENT:** We especially strongly support the following requirements at 9VAC25-630-60 that brokers maintain detailed records regarding transfer of amounts of poultry waste equal to or greater than 5 tons in any 365-day period. This record-keeping requirement is important to help ensure that DEQ and citizens know where these wastes go and be able to trace problems when they occur. We agree that exemption from the full record-keeping requirements for very small transfers of poultry waste may be acceptable and feel that 5 tons is a reasonable cut-off point. Some have commented that this cut-off amount should be raised to 10 tons per year but, to our knowledge, have provided no technical justification to show that 10 tons is more appropriate than 5 tons. In fact, there is no specific technical justification for any particular tonnage threshold. The fact remains that any amount of waste transferred and land-applied could cause environmental problems and this de minimis threshold is based only upon the perception that lower amounts present lower levels of risk. Requirements at 9VAC25-630-70 that end-users maintain detailed records when they accept greater than 5 tons per year. As stated above, these detailed records are vital to ensure that DEQ can properly assess environmental impacts from these transfers and that other citizens know what is being done in their neighborhoods. Also as above, no technical factors provide specific justification for any particular threshold amount. The smaller the number, the less risk that problems will occur. The safest approach would require that detailed records be

required for all transfers, no matter how small, and is as easily justified as any threshold we can set.

**COMMENTER: David Sligh, Upper James Riverkeeper - James River Association**

**COMMENT:** The rule calls for certain records if over 5 tons are given to a party in any 365 days. That does not appear to be workable. The only solution is to require records for all transactions without the 5 ton cutoff.

**COMMENTER: Leslie Mitchell Watson, Director - Friends of the North Fork of the Shenandoah River  
Margaret Lorenz, Friends of the North Fork of the Shenandoah River**

**COMMENT:** .We support the inclusion of the reporting threshold from ten tons per year to five tons per year.

**COMMENTER: Kristen J. Hughes Evans, Virginia Staff Scientist - Chesapeake Bay Foundation**

**RESPONSE:** DEQ proposed dropping the threshold which triggers a poultry grower or poultry waste broker would have to keep records in order to ensure that the majority of transferred poultry waste was managed properly. Staff determined that lowering the recordkeeping threshold to five (5) tons will not provide significant additional water quality protection than the original threshold of 10 tons. Most poultry litter applied commercially is delivered in multiple spreader truck loads, each holding eight (8)-10 tons. In addition, the regulation requires that the technical requirements for poultry waste storage and use be followed for any amount of litter applied. The 10 ton threshold will focus the enforcement of the requirements on the majority of transferred waste. ***The tonnage threshold which triggers recordkeeping has been changed back to 10 tons in the final amendments.***

### **SC-3 SUBJECT: RECORDKEEPING OF POULTRY WASTE TRANSFERS**

**COMMENT:** As part of the required records for litter transfer to someone other than a broker, the proposed changes to the General Permit requires the poultry grower to keep a record of the locality in which the recipient intends to utilize the [litter]. The record of where a 3rd party land applies poultry litter should be the responsibility of the end user, not the grower, whom has no control over where the 3rd party may actually utilize the litter. Tyson recommends that the poultry grower only be responsible for maintaining the name and address of the 3rd party, not the location of where the litter was spread. Furthermore, Tyson recommends that language be incorporated into the changes to the general permit that specifically states that a poultry grower is not responsible for any actions taken by an end user or broker of poultry litter.

**COMMENTER: Jamie Burr - Tyson Foods, Inc.**

**RESPONSE:** The location of the final destination of the poultry waste is an important component of the tracking process, particularly when the farm where it is to be applied is located far from the end-user's mailing address. The regulation is specific as to the regulatory requirements of the poultry grower. ***No changes are being proposed to address this comment.***

**COMMENT:** I am concerned about monitoring the amounts and sources applied to farms and gardens.

**COMMENTER:** John C. Barber, Sr.

**RESPONSE:** The existing regulation language sets forth recordkeeping requirements regarding the amount and source of poultry waste transfers. These requirements are not being removed in the proposed amendments. ***No changes are being proposed to address this comment.***

**COMMENT:** We believe that the record keeping period should be extended from 3 years to 5 years.

**COMMENTER(S):** Don Sims, Float Fisherman of Virginia  
Bill Tanger, Friends of the Rivers of Virginia

**RESPONSE:** A three (3) year retention time for maintaining required records is based on consistency with the requirements for the permitted poultry grower, as well as the requirements found in the VPA permit regulation (9VAC25-32) related to records maintenance. It is not apparent that environmental benefit would be achieved by extending the retention period from three (3) to five (5) years. ***No changes are being proposed to address this comment.***

#### **SC-4 SUBJECT: GROWER TRAINING**

**COMMENT:** Please make [training] user friendly

**COMMENTER:** David Lovell, Accomack County Poultry Grower

**COMMENT:** Undue burden placed on the small volume or less frequent user due to the training requirement.

**COMMENTER:** Robert Runkle, Chairman - Culpeper Soil and Water Conservation District

**COMMENT:** I am opposed to attending training every 5 years.

**COMMENTER:** Freddy Holland - Poultry Grower

**COMMENT:** Opposed to grower training.

**COMMENTER:** Mark Deavers - Poultry Waste Broker

**COMMENT:** 9VAC25-630-30.A.6 includes new language that requires poultry growers to complete a training program at least once every five years. Section 9VAC25-630-30.B.2.d also requires end users or brokers to obtain training at least once every five years. It is unclear as to who is responsible for developing the curriculum for this training, what training would qualify as meeting this requirement, how a grower would know when such training is available, and who has fiscal responsibilities of the training. Tyson recommends that these items be clearly addressed prior to finalizing changes to the permit.

**COMMENTER:** Jamie Burr - Tyson Foods, Inc.

**RESPONSE:** In order to keep costs at a minimum and make participation less burdensome, DEQ intends to incorporate this training into other meetings, conferences and events that poultry growers, brokers and end users typically attend. These venues

may include meetings sponsored by DEQ, DCR, Virginia Cooperative Extension and industry groups. ***No changes are being proposed to address this comment.***

**COMMENT:** Permitted poultry growers should not be required to attend education sessions once every 5 years as proposed. Permitted growers are required to obtain training when they seek initial permit coverage. Permitted growers also receive one-on-one education tailored to their farming operation from DEQ staff during the annual farm inspection. Furthermore, this proposed change does not directly support the stated purpose of the Notice of Intended Regulatory Action to address concerns regarding the transfer and offsite management of poultry waste.

**COMMENTER: Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation**

**COMMENT:** It is burdensome and overkill to require permitted poultry growers to attend training every five years. Under the existing regulations, growers receive training when they file for coverage under the VPA General Permit for Poultry Waste Management. Subsequently, they receive an annual inspection from DEQ. Any new information is communicated to the growers during their annual inspection. The program has been working fine; poultry growers have come to understand the requirements, and it is simply unnecessary to have them attend additional training sessions. VPF, Virginia Cooperative Extension, and soil and water conservation districts also offer educational opportunities for growers. And, in accordance with the Poultry Waste Management Act, poultry processors provide technical assistance and education for their contract growers on these topics.

**COMMENTER: Hobeigh Baughan, President - Virginia Poultry Federation  
Roger Hatcher, President - Cumberland County Farm Bureau**

**COMMENT:** Requiring growers to require attend training every 5 years, when under the existing regulations, growers receive training when they file for coverage under the VPA general permit poultry waste management. We believe that the current regulatory process provides for annual DEQ inspection where new information can be directly passed from the DEQ Inspector to the poultry grower and where poultry processors are required to provide technical assistance education for there growers. In addition education opportunities are available from the Virginia Poultry Federation, Virginia Cooperative Extension and Soil and Water Conservation districts

**COMMENTER: Katie K. Frazier, Vice President - Public Affairs**

**RESPONSE:** The requirement for the permitted poultry grower to attend more than one training session is consistent with the Virginia Pollution Abatement General Permit for Animal Feeding Operations in that the livestock operators must attend training once every three years. DEQ intends to work with the poultry industry associations and commercial processors to facilitate opportunities for growers to obtain credit for training received during industry events and meetings. ***No changes are being proposed to address this comment.***

**COMMENT:** Is there anyway we can get around having so much training for the end grower it would help with having more choices of where I can sell my chicken litter to the to highest bidder.

**COMMENTER: Donald Bishop, Cumberland County Poultry Grower and Cumberland County Anaerobic Digester Project**

**COMMENT:** Any required training should be provided at the local level and easily accessible to the producer.

**COMMENTER:** Robert Runkle, Chairman - Culpeper Soil and Water Conservation District

**RESPONSE:** DEQ intends to work with the poultry industry associations and commercial processors to facilitate opportunities for growers to obtain credit for training received during industry events and meetings. ***No changes are being proposed to address this comment.***

#### **SC-5 SUBJECT: GROWER ANNUAL REPORTING/ RECORDKEEPING**

**COMMENT:** Make [recordkeeping] simple

**COMMENTER:** David Lovell, Accomack County Poultry Grower

**COMMENT:** Permitted growers should not be required to submit copies of poultry waste transfer records to DEQ on an annual basis. This information is available for collection by DEQ staff during the annual farm inspection. This provision is a convenience for DEQ that does not impact water quality but creates a burden for the permitted poultry grower.

**COMMENTER:** Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation

**COMMENT:** VPF opposes the proposal to require permitted growers to file annual reports to DEQ. Again, the growers are used to the current system of making the records available to DEQ during the annual inspection, and it is an unnecessary burden to have them submit the records to DEQ by a certain date. Please remember that these are small family farms (without clerical staff) juggling many tasks - many with important deadlines dictating when to feed, plant, spread manure, and other aspects of farming. While growers, overall, have had an excellent record of compliance with the record keeping requirements under the existing regulations, we are concerned that the additional burden of reporting by a date-certain will create compliance problems. Rather than the efficient use of inspectors' time, they may end up spending an inordinate amount of time trying to get farmers to file reports. The current system is not broken, so please leave it as is.

**COMMENTER:** HobeY Baughan, President - Virginia Poultry Federation  
Roger Hatcher, President - Cumberland County Farm Bureau

**COMMENT:** I feel that reporting outside of the inspection is going to be an extra burden to the growers, whether by mail or by fax, by phone it is going to add an extra burden and probably will not get done without enforcement.

**COMMENTER:** Will Sanderson, Cumberland County Poultry Grower

**COMMENT:** We support the inclusion of requiring permitted growers and poultry litter brokers to report annually to DEQ.

**COMMENTER:** Kristen J. Hughes Evans, Virginia Staff Scientist - Chesapeake Bay Foundation

**COMMENT:** We have concerns about requiring permitted growers to file annual reports to DEQ versus the current system of making records available to DEQ during annual

farm inspections. We believe that growers have a track record of compliance with the recordkeeping requirements under existing regulations.

**COMMENTER: Katie K. Frazier, Vice President - Public Affairs**

**COMMENT:** Opposed to any additional permitting, filing of annual reports or any other recordkeeping by the growers which are beyond what is currently required at annual inspections.

**COMMENTER: Lareth May, Poultry Grower  
Mark Deavers - Poultry Waste Broker**

**RESPONSE:** It is recognized that the poultry growers' records are obtained at the annual inspection and that this information can be requested at any time under the current requirements. The annual report requirement was added to address a timing issue only. ***The annual report requirement has been removed from the final amendments.***

#### **SC-6 SUBJECT: PERMITTED ENTITY REQUIREMENTS**

**COMMENT:** We support:

1. a required nutrient management plan (NMP) that must be approved by the Department of Conservation and Recreation (DCR)
2. the requirement that the NMP be developed by a certified nutrient management planner
3. the monitoring requirements to determine levels of nutrients in soils and stored chicken waste

**COMMENTER(S): Don Sims, Float Fisherman of Virginia  
Bill Tanger, Friends of the Rivers of Virginia**

**RESPONSE:** DEQ acknowledges support for the concepts included in the proposed regulation and adds clarification that a nutrient management plan approved by VA DCR is only required of the permitted grower, and a nutrient management plan is one option for an end-user to determine the application rate. ***No changes are being proposed to address this comment.***

#### **SC-7 SUBJECT: TECHNICAL REQUIREMENTS - METHODS TO DETERMINE LAND APPLICATION RATE**

**COMMENT:** It shouldn't be up to me [a poultry grower] to have to determine what method is used by the recipient to determine that [land application] rate is going to be; that should be between the end user and DEQ but it shouldn't be the producer that has to indicate that. If we have to tell our end users how they to have apply and at what rate there are going to be a lot of unhappy customers that we have to serve.

**COMMENTER: Matthew Lohr - Member of Virginia House of Delegates and Rockingham County Poultry Producer**

**COMMENT:** Requiring growers to collect the planned methods of determining litter application rates from end users is not the responsibility of the grower or the broker.

**COMMENTER: Henry E. Wood, Jr.; President - Buckingham County Farm Bureau**

**COMMENT:** Opposed to asking what the consumer does with the litter, it's not my business, end user needs to record and give to DEQ to keeps brokers and growers from policing it for DEQ.

**COMMENTER:** Jeff Good

**COMMENT:** Don't want to be a policeman by asking how the rate was determined.

**COMMENTER:** Reid Mackey - Poultry Waste Broker/ Hauler

**COMMENT:** Requiring growers and brokers to collect from end-users information about how they intend to use the transferred litter (crop type and application rate determination method) will have growers and brokers in the undesirable position of policing end-users. If DEQ is insistent that this information be captured, then "unknown" should be an acceptable response option.

**COMMENTER:** Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation

**COMMENT:** VPF opposes the proposed requirement that poultry growers and poultry litter brokers and haulers keep a record, if known, of how end-users intend to apply poultry litter. We oppose even the suggestion that poultry growers or brokers have any oversight or responsibility for how end-users apply litter. Asking growers and brokers to question end-users about their management intentions could be interpreted by the end-user as a projection of oversight by the litter provider. The intrusiveness and of this awkward inquiry will likely cause most brokers and growers to mark the form, "unknown." Thus, the information will be incomplete. We therefore question the utility of even asking for this inquiry to be made.

**COMMENTER:** HobeY Baughan, President - Virginia Poultry Federation  
Roger Hatcher, President - Cumberland County Farm Bureau

**COMMENT:** I am opposed to the following: requiring growers to inspect, demand or keep records on how end users utilize or apply the litter. That should not be a requirement for growers to keep track of; what business is this of mine to tell another producer how to use his product. This is not something that growers should be required to keep.

**COMMENTER:** Lareth May, Poultry Grower

**RESPONSE:** The recordkeeping requirement related to which method is used to determine the land application rate was proposed in order to facilitate in determining and quantifying nutrient reductions. It was determined that this information will not provide the agency with conclusive data to determine actual nutrient reduction, so it is not necessary to require the information to be recorded. ***The recordkeeping item has been removed from the final amendments.***

**COMMENT:** The requirement for the poultry grower and broker to record the method by which the end user intends to determine the application rate is an important aspect of end user education. The recordkeeping requirement will help facilitate communication between poultry litter suppliers and end users about regulatory requirements for land application. Without this information, DEQ will have no means to assess the effectiveness of this program.

**COMMENTER:** Kristen J. Hughes Evans, Virginia Staff Scientist - Chesapeake Bay Foundation

**RESPONSE:** The recordkeeping requirement related to which method is used to determine the land application rate was proposed in order to facilitate in determining and quantifying nutrient reductions. It was determined that this information will not provide the agency with conclusive data to determine actual nutrient reduction, so it is not necessary to require the information to be recorded. The requirements for the end user will be communicated via the fact sheet when litter is transferred. The effectiveness of the program will be better measured by increased litter availability in areas outside those with concentrated poultry production, increases in nutrient management planning in areas to which litter is transported, and more effective resolution of complaints where poultry litter is not managed in a manner protective of the environment. ***The recordkeeping item has been removed from the final amendments.***

**COMMENT:** Supports providing the end user a variety of methods to determine their application rates.

**COMMENTER:** Todd Haymore, Commissioner - VDACS

**COMMENT:** The following proposal, I find to be reasonable, having the end user to utilize soil samples and application rates following best management practices for the crop growth.

**COMMENTER:** Lareth May, Poultry Grower

**RESPONSE:** DEQ acknowledges the support. ***No changes are being proposed to address this comment.***

#### **SC-8 SUBJECT:** TECHNICAL REQUIREMENTS - STANDARD RATE

**COMMENT:** 1½ tons over a three years is not a lot of litter at all, that's a ½ tons a year most crops at a minimum are able to absorb at least a ton a year and certainly the phosphorus levels will not be billed up at one ton a year, so I think another small suggestion would be to raise that standard rate up instead of 1½ tons for three years at least consider making it one ton a year; that way a lot of small producers will not have to fall under the regulations, which I think would certainly ease the enforcement aspect of it.

**COMMENTER:** Matthew Lohr - Member of Virginia House of Delegates and Rockingham County Poultry Producer

**COMMENT:** Of serious concern is the prohibition of applying poultry litter with a soil analysis to 1.5 tons per acre of no more than every three years. Adding organic matter to the soil is one of the best ways to build healthier soil and a thicker and better sod of grass. This thicker crop cover will further reduce sediment and nutrient runoff to waterways.

**COMMENTER:** Henry E. Wood, Jr.; President - Buckingham County Farm Bureau

**COMMENT:** Raise 1.5 tons for every three years to 2 tons per year. Applications of 2 tons of litter per year on a growing crop, hay or pasture field is not too much you can't get that much runoff of anything by applying 2 tons per year, a crop can utilize that.

**COMMENTER:** Lareth May, Poultry Grower  
Mark Deavers - Poultry Waste Broker

**COMMENT:** I support more frequently than 1½ tons for every three years.

**COMMENTS: Reid Mackey - Poultry Waste Broker/ Hauler**

**COMMENT:** End-users should be allowed to apply poultry waste to any crop at a standard rate of 2 tons per acre once every three years instead of 1.5 tons per acre as proposed. This slight increase in the standard rate will allow interested and willing farmers to try poultry litter as a fertilizer alternative to a greater number of crops than just pasture or hay. Increasing the standard rate to 2 tons, coupled with the proposed buffers, will not result in any water quality issues when 2 ton rate of poultry litter is applied [to] permanent pasture and hay.

**COMMENTS: Wilmer N. Stoneman, III, Associate Director - Government Relations - Virginia Farm Bureau Federation**

**RESPONSE:** The proposed option of applying 1.5 tons of poultry waste per acre once every three (3) years without requiring a soil test was added to the technical requirements in order to allow flexible options for obtaining appropriate land application rates while protecting water quality. The standard rate is only one of four (4) options by which a farmer/ producer can determine their land application rate. If a higher rate is desired one of the other options may be used. ***No changes are being proposed to address this comment.***

**COMMENTS:** In order to qualify for the 1.5 ton standard rate every 3 years without conducting soil testing, either:

- a) disqualify land within known high-nutrient counties like Rockingham, Northern Augusta, Page, Shenandoah, Accomack, and Northampton; or
- b) require that poultry waste be transported to land more than X number of miles (80-100) from where it is produced

**COMMENTS: Jeff Kelble - Shenandoah Riverkeeper**

**COMMENTS:** Delete the option to apply 1.5 tons poultry waste every 3 years without requiring a soil test.

**COMMENTS: Lynton Land**

**RESPONSE:** The proposed regulation states that in order to utilize the option of applying 1.5 tons of poultry waste per acre once every three (3) years without requiring a soil test, nutrients may not have been supplied by an organic source of fertilizer during the three (3) years preceding the application. It is not probable that a field that has received only commercially blended fertilizer will have extremely high soil test phosphorus levels, and the phosphorus in the 1.5 ton application rate will be utilized by a three (3) year crop rotation. Soils with high phosphorus levels are likely to have received organic sources of nutrients and thus will be disqualified from this option. Further, distance from a poultry farm and nutrient content of the soil are not always directly related. The proposed regulation imposes a field-specific criterion, rather than a geographic criterion, in order that fields in need of phosphorus might not be disqualified simply based on location. ***No changes are being proposed to address this comment.***

**SC-9 SUBJECT: TECHNICAL REQUIREMENTS - PHOSPHORUS CROP REMOVAL LEVELS**

**COMMENT:** Lower the soil test phosphorus level above which an end-user would be required to utilize nutrient management planning because no crop response to additional phosphorus is expected at the levels proposed. The level should be reduced to 55 ppm.

**COMMENTER:** Jeff Kelble - Shenandoah Riverkeeper

**RESPONSE:** The proposed regulation allows poultry waste to be applied at phosphorus crop removal rates when soil test phosphorus levels do not exceed 35% saturation, which range from 135-162 ppm, depending on the geographic region. If soil test results are above these levels, a nutrient management plan must be used to determine the application rate. These levels are based on guidelines found in the Virginia Department of Conservation and Recreation Nutrient Management Standards and Criteria. While no crop response is expected, an application rate limited to crop removal will prevent phosphorus loss due to saturation at the proposed soil test levels, and is consistent with the application rate that could be recommended in a DCR nutrient management plan.

***No changes are being proposed to address this comment.***

**COMMENT:** Prohibit phosphorus applications if the soil test phosphorus level is above 55 ppm. Require that poultry waste application rates be based on soil test results and that application rates for nitrogen and phosphorus be limited to those specified in the Virginia Agricultural Land Use Evaluation System (VALUES).

**COMMENTER:** Lynton Land

**RESPONSE:** The proposed regulation offers several different methods to determine the application rate. None of the methods allow nitrogen application above the agronomic rate, and the methods to determine phosphorus application rate all consider the risk of phosphorus loss to the environment and minimize that risk. ***No changes are being proposed to address this comment.***

**SC-10 SUBJECT: TECHNICAL REQUIREMENTS - RECORDKEEPING**

**COMMENT:** Much of the information about where litter is applied and how much is applied is already available through my records as a grower and spreader of poultry litter therefore it seems unreasonable to burden end users with additional recordkeeping what may cause them to decide that using poultry litter is too much trouble. Some end users will balk at the additional recordkeeping and documentation required.

**COMMENTER:** William Cole, Amelia County Poultry Grower

**COMMENT:** In terms of amendments to the existing regulations to include additional utilization and storage requirements, in my mind, will be both detrimental to farmers in general as well as contradictory to already existing regulations. It is already mandated that poultry growers, as well as brokers, keep records as to where litter is going, how much litter is being transferred, nearest waterways being effected, as well as "open book" audits by DEQ whenever they request them.

**COMMENTER:** Charles Wenger, Poultry Grower

**RESPONSE:** It is recognized that the poultry growers' records are obtained at the annual inspection and that this information can be requested at any time under the current requirements. The proposed recordkeeping requirements will provide additional information which DEQ would need to investigate a field specific situation such as land application records, crop yields and crop history, which would not be recorded and maintained by the poultry grower. The end-user would be required to maintain the records on-site, there are no reporting requirements for the end-user that is covered under the technical regulations/ requirements. ***No changes are being proposed to address this comment.***

**SC-11 SUBJECT: TECHNICAL REQUIREMENTS - STORAGE**

**COMMENT:** The waste management and storage requirements at 9VAC25-630-80 are especially important. The mandates that waste stockpiled outside for more than 14 days be covered and that all such waste be segregated from surface and groundwater are especially important. Also, the limit on application to 1.5 tons every 3 years unless soil samples have been taken is important. We can testify from first-hand knowledge that piles of poultry waste are sometimes left in place on the land and uncovered for very long periods and this condition often leads directly to water pollution discharges.

**COMMENTER:** David Sligh, Upper James Riverkeeper - James River Association

**RESPONSE:** DEQ acknowledges the support. ***No changes are being proposed to address this comment.***

**SC-12 SUBJECT: TECHNICAL REQUIREMENTS - RIGHT OF ENTRY**

**COMMENT:** As a Legislator, I know and we look at the State code you can't just assume things; you have to mean what you say and say what you mean and it says to allow DEQ right of entry for inspection to me that technically gives the government the authority to show up at your door and say we are here for inspection without giving the farmer the opportunity to make sure that all records are in place. It seems like just by adding the language that they must give prior notice would be just a small addition, I think that would alleviate a lot of concerns that end users may have knowing that the government can say we want to do an inspection, let's set up a time when it's convenient give you a chance to get all your records in order; but the way it's worded now technically some one from the DEQ could show up at your door and demand inspection and that's the way it's worded and you [staff] may say that wouldn't happen but that is the way it's worded.

**COMMENTER:** Matthew Lohr - Member of Virginia House of Delegates and Rockingham County Poultry Producer

**COMMENT:** Many [end users] will not want to be open for DEQ inspection just because they used poultry litter.

**COMMENTER:** William Cole, Amelia County Poultry Grower

**COMMENT:** This should say "for cause". You have to have a good reason to go on that person's farm and you should not have to announce.

**COMMENTER:** Matt Long

**COMMENT:** Give at least 24 hours notice.

**COMMENTER:** Mark Deavers - Poultry Waste Broker

**COMMENT:** Directors expressed discomfort regarding regulators being able to access producers' property anytime.

**COMMENTER:** Robert Runkle, Chairman - Culpeper Soil and Water Conservation District

**RESPONSE:** The proposed amendments included language regarding right of entry that was added to sections 9VAC25-630-60, 9VAC25-630-70 and 9VAC25-630-80 (the technical regulation sections). This standard language reads: Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation. The proposed amendment language simply clarifies the authority granted to DEQ in State Water Control Law. ***No changes are being proposed to address this comment.***

### **SC-13 SUBJECT: SUPPORT FOR TECHNICAL REQUIREMENTS**

**COMMENT:** The concept of “end-users” following “technical requirements” concerning the storage and application of poultry waste is a much preferred method over a more burdensome permitting process. The continued use of the fact sheet to explain those requirements is also preferred.

**COMMENTER:** Todd Haymore, Commissioner - VDACS

**COMMENT:** If change is necessary, we do prefer it be done in technical revisions and not require a permit.

**COMMENTER:** Rick Shiflet, Land Use Committee - Augusta County Farm Bureau Federation

**COMMENT:** Tyson supports the use of a general permits system to promote agricultural production while protecting our valuable natural resources.

**COMMENTER:** Jamie Burr - Tyson Foods, Inc.

**COMMENT:** We strongly support:

1. the requirement for a site map showing where waste is applied
2. the maximum application rates in section 9VAC 25-630-80 for utilization of transferred waste

**COMMENTER(S):** Don Sims, Float Fisherman of Virginia  
Bill Tanger, Friends of the Rivers of Virginia

**COMMENT:** If change is necessary, the technical revisions proposed are more acceptable to the end user and broker than the permit process.

**COMMENTER:** Headwaters Soil and Water Conservation District - Land Use Committee

**COMMENT:** Support the following provisions:

1. utilizing technical requirements, rather than requiring coverage under a permit;

2. incorporating the requirements into the existing "Fact Sheet;
3. allowing end-users to maintain, rather than requiring them to report, records;
4. not requiring end-users to register with or file paperwork with DEQ;
5. providing a menu of options for land application of poultry litter rather than a one-size-fits-all approach;

**COMMENTER(S): Katie K. Frazier, Vice President - Public Affairs  
Hobey Baughan, President - Virginia Poultry Federation  
Roger Hatcher, President - Cumberland County Farm Bureau**

**COMMENT:** A variety of options for end users and application rates of poultry litter rather than mandating one solution. These options must include all of the following: proper removal rates in certain applications; a standard rate of limit application once every three years when no soil analysis has been taken, applications supporting the soil test recommendations in certain circumstances or a nutrient entrant plan that's been provided by a certified development nutrient planner.

**COMMENTER(S): Katie K. Frazier, Vice President - Public Affairs**

**COMMENT:** Support the following provisions:

1. strengthening accounting of litter transfers by enabling DEQ to collect additional information about where litter is utilized;
2. strengthening accountability of poultry litter brokers and haulers through their registration with the agency.

**COMMENTER(S): Hobey Baughan, President - Virginia Poultry Federation  
Roger Hatcher, President - Cumberland County Farm Bureau**

**COMMENT:** I encourage the DEQ to stick by its proposed limits of 1.5 tons of litter every 3 years and for the proposals to cover end-users using 5 tons or more of material.

**COMMENTER: Kent Sensenig**

**COMMENT:** The following proposal, I find to be reasonable, incorporating these requirements for application into the fact sheet.

**COMMENTER: Lareth May, Poultry Grower**

**RESPONSE:** DEQ acknowledges support for the concepts included in the proposed regulation. ***No changes are being proposed to address this comment.***

**COMMENT:** Education and recordkeeping along with training are preferred to over-regulation. Monitoring of on-farm records should be sufficient. The need for up to 200' wide buffers on small swales seems excessive.

**COMMENTER: Robert Runkle, Chairman - Culpeper Soil and Water Conservation District**

**RESPONSE:** DEQ acknowledges support for the concepts included in the proposed regulation and adds clarification that the proposed regulation includes buffer distances of 100' (without permanent vegetated buffer) or 35' (with permanent vegetated buffer) from surface water courses. ***No changes are being proposed to address this comment.***

**SC-14 SUBJECT: LITTER ANALYSIS**

**COMMENT:** My concern is that the analysis of poultry litter is required only once in three years. Do we know that this is truly representative of litter being transferred? Having worked extensively with litter transfer records, I have noticed that for growers who analyze more frequently, the litter analysis can differ significantly from one transfer to the next, within a span of 3 years. If the analysis provided to the end-user is not representative of the litter being spread, it could lead to an over- or under-application of nutrients for the intended crop. I would prefer to see some method of ensuring a representative litter analysis.

**COMMENTER: Becky Barlow, Poultry Litter Market Maker**

**COMMENT:** What should be mandatory are chemical analyses of each batch of litter removed, limits imposed on constituents applied, and post application analyses of the soil and surface water and groundwater, where applicable. Poultry litter should be prevented from sale to farms bordering streams unless best management practices, especially buffer zones are implemented.

**COMMENTER: Bob Luce**

**RESPONSE:** The current regulation requires the poultry grower to analyze poultry waste a minimum of once every three years for the nutrient content in order to determine appropriate application rates. A copy of the analysis is required to be provided to the recipient of the transferred waste. If the application rate is greater than 1.5 tons per acre every three (3) years, soil samples must be used when determining the application rate. Best management practices, included in the proposed technical regulations and mandatory for all land application sites and are designed to reduce the risk of surface and ground water contamination from nutrients and pathogens. ***No changes are being proposed to address this comment.***

**COMMENT:** Where end users are required to sample poultry wastes and adjust application rates accordingly, it is important that these analyses be accurate. The proposed VPA permit at Part III.A.5. allows that where two or more poultry waste sources are commingled or stored "a sample that best represents the waste shall be used to calculate the nutrients available. . ."We contend that since the characteristics of different wastes may be very different that the only way to accurately assess the nutrient levels that are being applied is to sample and apply each load of waste separately. One sample from one load of waste will not give assurance that application rates are appropriate if that load is then commingled with other loads. DEQ must either devise a protocol under the wording of this permit condition that will truly provide for representative sampling or revise this provision to specify how this goal will be met.

**COMMENTER: David Sligh, Upper James Riverkeeper - James River Association**

**RESPONSE:** The compliance strategy is part of implementation guidance that would be developed after any changes to the regulation. Provisions clarifying how commingled poultry waste sources should be sampled would be a component of this guidance. ***No changes are being proposed to address this comment.***

**SC-15 SUBJECT: ENFORCEMENT/ COMPLIANCE/ MONITORING**

**COMMENT:** The reality is that the money is not going to be there to enforce all of these regulations as written so to me the common sense approach would be to ease them a little bit so that it wouldn't be nearly the enforcement.

**COMMENTER:** Matthew Lohr - Member of Virginia House of Delegates and Rockingham County Poultry Producer

**COMMENT:** Inspections will be necessary to ensure compliance.

**COMMENTER:** Penny Manners

**COMMENT:** We especially strongly support the requirement at 9VAC25-630-30.B.2.b., which provides authorization for brokers and end-users only where their activities will not contravene Water Quality Standards. Despite the specific technical requirements included in the draft regulation, there still exists the potential for violation of Water Quality Standards and this provision withdraws authorization for activities that do so. We assert that follow-up monitoring by DEQ should be conducted at a sampling of sites to ensure that Standards are met where the technical requirements are followed.

**COMMENTER:** David Sligh, Upper James Riverkeeper - James River Association

**COMMENT:** A flexible approach to enforcement of these regulations must be guaranteed.

**COMMENTER:** Katie K. Frazier, Vice President - Public Affairs

**COMMENT:** A regulation is only as good as its enforcement, and this rule will be particularly difficult to enforce. There should be a practical supplement to the field work of state agency staff. For example, each party subject to this rule should be required to complete an online compliance certification each year. The certification should be in some detail so that the person will know specifically what they should have done when certifying their compliance.

**COMMENTER:** Leslie Mitchell Watson, Director - Friends of the North Fork of the Shenandoah River  
Margaret Lorenz, Friends of the North Fork of the Shenandoah River

**RESPONSE:** The inspection and compliance/ enforcement strategy is part of implementation guidance that would be developed after any changes to the regulation. DEQ acknowledges the suggestion. ***No changes are being proposed to address this comment.***

**COMMENT:** Because land application sites may contribute pathogens to nearby waters and many streams are already impaired for bacterial pollution, it would be inappropriate and illegal to permit new applications that would contribute to those existing violations. We are concerned that this situation is not adequately addressed and request that DEQ conduct follow-up investigations to determine whether these permitted activities are causing increased human health risks.

**COMMENTER:** David Sligh, Upper James Riverkeeper - James River Association

**RESPONSE:** The inspection strategy is part of implementation guidance that would be developed after any changes to the regulation. In addition, DEQ staff in each of the regional offices collects water samples on a routine schedule at many locations across the Commonwealth. These water samples are shipped to a state laboratory for chemical and bacterial tests. The samples are tested for levels of nutrients, solids, bacteria associated with human and animal wastes, toxic metals, some pesticides and harmful organic compounds. If a water quality impact, or other environmental harm such as a fish kill, is found to have been directly caused by a specific pollutant management activity, the permit holder (or regulated broker or end-user) would be held accountable if the regulatory requirements were not followed. ***No changes are being proposed to address this comment.***

**SC-16 SUBJECT: BROKER REQUIREMENTS**

**COMMENT:** Regulation of the broker and hauler/ spreader seems to us to be far more important than regulation of the end-user. A formal certification process for the hauler/ spreader should be considered.

**COMMENTER:** Robert Runkle, Chairman - Culpeper Soil and Water Conservation District

**RESPONSE:** The proposed amendments include requirements that must be adhered to by the broker and end-user of poultry waste when stored and land applied. DEQ acknowledges the suggestion. ***No changes are being proposed to address this comment.***

**COMMENT:** Registering of the brokers and requiring them to keep and submit hauling records, my understanding is there have been instances in the past where the brokers have not submitted their records which is causing these problems, so I find this to be reasonable.

**COMMENTER:** Lareth May, Poultry Grower  
Mark Deavers - Poultry Waste Broker

**RESPONSE:** DEQ acknowledges support for the concepts included in the proposed regulation. ***No changes are being proposed to address this comment.***

**COMMENT:** Opposed to additional recordkeeping.

**COMMENTER:** Mark Deavers - Poultry Waste Broker

**RESPONSE:** The proposed recordkeeping requirements will provide additional information which DEQ would need to investigate field specific situations. The end-user would be required to maintain the records on-site, there are no reporting requirements for the end-user that is covered under the technical regulations/ requirements. The recordkeeping requirement related to which method is used to determine the land application rate was proposed in order to facilitate in determining and quantifying nutrient reductions. It was determined that this information will not provide the agency with conclusive data to determine actual nutrient reduction, so it is not necessary to require the information to be recorded. ***The recordkeeping item has been removed from the final amendments.***

**SC-17 SUBJECT: EDUCATION AND OUTREACH**

**COMMENT:** We support the required training programs for all poultry end users.

**COMMENTER(S):** Don Sims, Float Fisherman of Virginia  
Bill Tanger, Friends of the Rivers of Virginia

**RESPONSE:** The proposed amendments include an additional training requirement for the (permitted) poultry grower and poultry waste broker. Training is only required for the end-user if they obtain coverage under the general permit. As long as the end-user adheres to the requirements in sections 9VAC25-630-70 and 9VAC25-630-80 they will not be required to obtain coverage under the general permit. ***No changes are being proposed to address this comment.***

**COMMENT:** The need for coordinated outreach and education to the impacted industries was highlighted by farmers and the public who attended the hearings. There is a need to commit time and resources to develop simple guidelines and other materials to explain what the new requirements are for poultry growers, brokers and end-users.

**COMMENTER:** Katie K. Frazier, Vice President - Public Affairs

**COMMENT:** The final rule should clarify that any and all persons involved in poultry waste management on behalf of a company or farm must be trained.

**COMMENTER:** Leslie Mitchell Watson, Director - Friends of the North Fork of the Shenandoah River  
Margaret Lorenz, Friends of the North Fork of the Shenandoah River

**COMMENT:** The regulations need to be accompanied by an outreach and education effort, preferably conducted in partnership with agricultural organizations, to ensure poultry growers, brokers, and end-users are familiar with the new requirements.

**COMMENTER:** Kristen J. Hughes Evans, Virginia Staff Scientist - Chesapeake Bay Foundation

**RESPONSE:** DEQ staff intends to work with the industry and agricultural organizations to provide education and outreach to the grower, broker and end-users regarding the final amendments. These efforts have been ongoing throughout this regulatory action. ***No changes are being proposed to address this comment.***

**SC-18 SUBJECT: PERIODIC REVIEW OF REGULATION**

**COMMENT:** We are aware that soils on some farm land where poultry waste may be applied already contain a surplus of phosphorous and that *any* application to these sites will be inappropriate and may contribute to Standards violations. Clearly, applications to such lands may occur in those cases where soil sampling is not required. We assert that DEQ must perform some study to assess the extent to which such situations occur and, if necessary, make amendments to the regulation to address these problems.

**COMMENTER:** David Sligh, Upper James Riverkeeper - James River Association

**RESPONSE:** DEQ conducts a periodic review of regulations to determine if revision is necessary, and this is an example of an issue that would be considered in the regular review process. ***No changes are being proposed to address this comment.***

## APPENDIX I

**Table 1:**

Assateague Coastkeeper	Lower Susquehanna Riverkeeper
Audobon Naturalist Society	Lynnhaven River NOW
Blackwater Nottoway Riverkeeper Program	Mark Kovach Fishing Services
Blue Ridge Environmental Defense League	Massanutten Chapter of Trout Unlimited
Blue Ridge River Runners	Mid Atlantic Paddlers Association
Chesapeake Bay Foundation	Mossy Creek Flyfishing Shop & Outfitting Service
Civil & Environmental Services, LLC	National Committee for the New River
Clean Valley Council	Northern VA Trout Unlimited
Clean Water Action	Occoquan Watershed Coalition
Coastal Conservation Association Virginia	Patuxent Riverkeeper
Dan River Basin Association	Poquoson Citizens for the Environment
Downriver Canoe Company	Potomac Conservancy
Eastern Blue Ridge Fly Fishers	Potomac Riverkeeper
Environment Virginia	Preserve Frederick
Falmouth Flats Fly Fishers	Rainwater Management Solutions
Float Fisherman of Virginia	Rapidan Chapter of Trout Unlimited
Friends of Accotink Creek	Rivanna Conservation Society
Friends of Bryan Park	Sassafras Riverkeeper
Friends of Dyke Marsh	Scandia USA LiveGreen
Friends of James River Park	Shenandoah Riverkeeper
Friends of Stafford Creek	Shenandoah Valley Network
Friends of the New River	The Nature Conservancy
Friends of the North Fork of the Shenandoah River	Twin River Outfitters
Friends of the Rappahanock	Virginia Association of Biological Farming
Friends of the Rivers of Virginia	Virginia Chapter-Sierra Club
Friends of the Roanoke River	Virginia Conservation Network
Hands Across the Lake	Virginia Council of Trout Unlimited
James River Association	Virginia Eastern Shorekeeper
James River Fishing School	Virginia League of Conservation Voters
Ken Pendrod's Life Outdoors Unlimited	Winchester Trout Unlimited
Lands and Water	York County Waterways Alliance
Ms. Karie Walker	Mr. Odelle Robertson, Jr.

**Table 2: Chesapeake Bay Foundation Member Commenters**

Dorothy Abbott	Mrs. Dana Adams	Ms. Nancy Alexander	Jennifer Alexander
Cynthia Alksne	Ms. Vickie Allen	Mr. Dean Amel	Lawrence Amos
Dr. Eric Anderson	Ms. Frances Hartnett Angara	Kirk Barley	Mr. Joseph Barnoski
Mr. Carroll Barrett	Mr. Martin Baskin	Ms. Jen Beach	Mrs. Elizabeth-Reid Becker
Mr. John Belz	Jerry Benson	Nancy Berger	Mrs. Simona Bergman
Dr. Walter Beverly	Ms. Amy Biggs	Mrs. Bonnie Bilski	Ms. Mary Blackwell
Ms. Marilynne Blair	Ms. Nancy Bland	John Borgard	Mr. J Spotswood Bowyer
Ms. Elizabeth Bradbury	Mrs. Claire Branson	Mr. Brandon Briggs	Mrs. Judith Bryan
Ms. Gale Bryant	Mr. John Bryant	Mr. David Buchanan	Paul Burke - Journey Home
Ms. Sharon Burtner	Ava Butcher	Heather Buysse	Mrs. Bethany Cardone
Mr. Mark Caren	Jeannie Carlin	Mr. George Carneal	Ms. Kristin Carter
Ms. Lisa Chernoff	Mr. James Civitarese	Ms. Lorelee Clark	Mr. Andrew Cohen
Elisabeth Collins	Mr. Christian Cool	Bettie Cooper	Ms. Jeanne Corbin
Harriet Covey	Ms. Donna Cowling	Ms. Suzanne Cranford	Ms. Susan Crawford
Mr. Daniel Creedon	Mr. John Critchfield	Ms. Wanda Crockett	Ms. Roberta Curtis
Terri Cuthriell	Mr. David Dabay	Mrs. Marian Dabay	Alissa D'Auria
Ms. Ashley Davis	Mr. Robert M. Dawson	Mr. Edward C Deerfield	Mr. James Deppe
Mrs. Laura Diamantopoulos	Mr. Brian Dick	Mrs. Allison Dickens	Justin Dooley
Mr. Ralph Eaton	Mr. Ted Ellett	Blair Ellson	Brian Emerson
Mrs. Elizabeth Ende	Mrs. Gloria Engle	Ms. Janice Everett	Mr. James Ewan
Ms. Kay Ferguson	Mrs. Mary Lou Ferralli	Mr. Jason Fincham	Mr. Bill Fisher
Janice Flanders	Mr. Warren Fleischer	Dr. Robert Foos	Ariele Foster
Mrs. Katherine Fontaine	Ms. Alyssa Freeman	Sally Frodge	Ms. Nuala Galbari
Brian Gallagher	Mr. Edward Gibbs	Mr. Ken Gigliello	Ann Gordon
Sarah Graves	Ms. Ellen Gray	Ms. Dee Grimm	Craig Grube
Charles Gumas	Dr. Doreen Gumas	Mr. Jason H	Judith Hall
Gail Hallett Cousin	Mr. David Hannigan	Ms. Dana Harrison	Miss Tiffany Harville
Ms. Mary Ann Haske	Hank Helmen	Mr. Mark Henein	Mr. Robert Henenlotter
Dr. Richard Henshaw	Mr. Chet Hepburn	Ms. Mary Hill	Ms. Dianne Hinch
Mr. Ted Hochstadt	Ms. Lilli Hoffman	Ms. Kimberly Honeycutt	Dana Horton
Ms. Helen C. Horton	Ms. Karin Houston	Mrs. Sandra Howson	Sarina Hrubesch
Dr. Sophia Hughes	Mr. Zach Hurst	Mr. Henry Ickes	Mr. Robert Irvine
Patricia Isaacs	Mr. Douglas Jaslow	J.D. Jeffrey	Ms. Cheryl Johnson
David Jones	Dr. Sean K	Ms. Norma Kacen	Dr. Amit Kaldate
Mr. Michael Kennedy	Dr. Michael-David Kerns	Ms. Sharon Keys	Ms. Allison Kiehl
Ms. Sheila Kilpatrick	Mr. Mike King	Ms. Caroline Klam	Mr. Edward Knight
Margaret Koetsch	Kirsten Krivoshia	Mr. John Lander	Mr. Chris LaPlante
Audrey Lassiter	Mr. George Berton Latamore	Mr. Tom Layman	Mr. Ray Legge
Mr. Robert Leggett	Ms. Jessica LeTourneau	Mr. Patricia Ann Liske	Dr. Christine Llewellyn
Mrs. Barbara Lotterer	Miss Kathleen Luisa	Mr. Matthew Luxford	Mr. Charles Maddox
Mr. Edmond Marroni	Mr. Christopher Mawdsley	Joe McCue	Joe McCue
Thad McDonald	Ms. Kimberly McDonald	Ms. Mary Ann McFarland	Mr. Thomas McGarry
Mark McKenzie	Beth McKenzie-Mohr	Ms. Ashby McNeil	Mr. Philip Melillo
Mr. Charles Metzgar	Mrs. Nina Michael	Jennifer Michaelree	Miss Lucy Midelfort
Mr. Christopher Millard	Mrs. Betty Milligan	Ms. Irene Mills	Ms. Frannie Monasterio
Dr. Brian Moores	Andrea Moran	Edi Morris	Mr. Paul Morrisette
Mr. Brion Morrison	Mr. Dennis Motsko	Mr. Andrew Mueller	Mr. Carlos Munoz
John Ndiritu	Mr. Tom Nelson	Miss Jennifer Norman	Rev. Timothy O'Connell

Mrs. Kathy Oxton-Villemuer	Mrs. Jennifer Ozawa	Dr. Thomas Pakurar	Ms. Susan Pederson
Mr. Lance Pedigo	Mr. James Peterson	Mr. George Phillips	Dr. Mary Picardi
St. George Pinckney	Katherine Podlewski	Michael Potashnik	Susie Powell
Tod Preston	Christine Putnam	Monica Quade	Dr. John Ragosta
Ms. Felicia Rakes	Ms. Annette Ramos	Megan Reardon	Ms. Sherley Redding
Dr. Jeannette Regetz	Ms. Peggy Reinburg	John Reiter	Dr. Richard Renfield
Ken Ricklin	Scott Riley	Laura Robertson	Joseph Roop
Mr. Mike Rosenberg	Mr. Gavin Sampey	Mr. Enrique Sanchez-Armass	Ms. Rosemarie Sawdon
Mr. Edward Scerbo	Mr. Donald Scheu	Mr. Tim Schmitt	Mr. Milton Schultz
Mrs. Betty Scott	Mr. Russell Scott	Mr. Jimmy Shaffer	Michael Shaner
Mr. David Shantz	Mr. James Shelton	John Short	Mrs. Cheryl Sidwell
Ms. Therese Silberman	Sarah Sinsabaugh	Mr. Mark Skolnick	Mr. Hunter Sledd
Kathy Smart	Ms. Sharon Smith	M. Soltis	Dr. Danny Song
Jennifer Spaine	Mrs. Kathryn Squires	Ms. Sara Stewart	Jeffrey Stoltzfus
Mr. Adam Strasel	Ms. Marjorie Streeter	Georgia Strentz	Mr. Mike Supan
Ms. Kathleen Taimi	Ms. Jerrie Thornton	Ms. DeeDee Tostanoski	Mr. James Townsend
Paul Toxie	Randie Trestrail	Brian Turner	Carol Tyrer
Larry Uman	Mr. Howard Urbach	Mr. Joseph Valentine	Derek Venable
Ms. Linda Vesey	Mrs. Patricia VonOhlen	E. W. Waggener	Susan Wagner
Ms. Jan Ward	Mr. Paul Ward	Ms. Carol Warren	Mr. Alistair Wearmouth
Georgia Weatherhead	Suzanne Wheatley	Kristin White	Lynda Whitehead
Mr. John Whitelaw	Ms. Barbara Williams	Mr. Robert Williamson	Ms. Randi Wortham
Edward Wrobel	Ms. Brenda Yu	Mr. Paul Zahn	

**Table 3:**

Bob Abrams	Aubrey Ansell	Hunter Armstrong	Rob Arner
Justin Ball	Kirk Barley	Sean Michael Beaver	David Bernard
Dave Beverly	Linda Bodycomb	Tom Boyd	Darwin S. Braden
Eileen Brennan-Porter	Darryl Brewer	Timothy Bromelkamp	Henry Bruhl
Jim Bullard	Gain Bunten	L.J. Campbell	Chris Cannon
David Cartier	Nancy Cawood	Larry Chewing	George Church
Matt Church	Alex Clarke	Audrey Clement	Rich Coffman
Blake Condo	Bo Crowder	Grover E Czech	Douglas Dalgarn
Dan Davala	Melody Davala	Dee David	Samuel Davis
Janet L. Day	Frank & Denise Dertzbaugh	Terry DeSeta	Ray Dewar
Bob Dickinson	Larry DiJoseph	Lawrence DiJoseph	Dennis Dineen
G.C. Duck	Peter Dula	Thomas Ehrhard	Nick Elgas
Michael Estes	Daniel Fannon	Greg Feder	Herschel Finch
Thomas Fore	Art Friedlander	Bradley M. Gates	Christian Goebel
Christine Goepf	Lee Goldman	Greg Golliday	Lee Good
Maston Gray	Lyall Griffin	Tom Griffin	Timothy Griffith
B. Frank Hale	Ridgway M. Hall, Jr.	Trey Hampshire	James Hanson
Jeremy Hartman	Denise Hayes	Scott Hendricks	Joseph Hepp
Tim Hertzler	Patricia Hilgard	Patricia Hine	Sean Hoffman
Ted Hoppock	James Horton	Chad Hudson	Mitchell Humphreys
Lou Janesko	Thomas Jenkins	James John	Dave Jones
Robert Jordan	David Kaeuper	Jeff Kelble	Scott Kish
Scott Koehn	Valdean Langeburg	Phillip Latasa	Bryan Lewis
John Lipetz	Nathan Lott	Charlie Loudermilk	John Mathwin
Steve McNulty	Dave Menton	Cindy Meranda	Ed Merrifield
Ashby Miller	Rick Miller	Anna Mitchell	Jesse Moore
John Moser	Andrew D Mueller	Michael Mulloy	Mark Myers
James Nashed	Charles Newton	Mike O'Neill	Dan Owen

George & Pam Patterson	Alec Peltier	Peter Pfothenauer	Tony Pitale
Boyd Post	Mark Pullen	Dan Purdom	Brian Randolph
L.E. Rhodes	Duane Richards	Brian Risi	Teresa Rodriguez
Ed Runnion	Bob Runnion	William E. Savage, Jr	Douglas Seabright
Phyllis Shelton	Jay Sheppar	Larry Sigmon	Rick Siira
John Sites	Nick Smith	George Sorvalis	Cara Sottosanti
Francis Steinbauer	Wesley Stien	Ned Stone	Erik Thompson
Mac Thornton	Dan Tillery	John Tipton	Jesse John Tolliver
Marianne Tolliver	Ronald Uleck	Jonathan Uston	Raymond Vaughan
Derek Venable	Donald Walter	Jan Ward	Scott Warholic
Susan Wilensky	Brian Williams	Patricia Williams	Mark Wimbish
James Darrell Woolridge	Mark Zimmerman		

**Table 4:**

Julie Blake	Todd Blake	Paul Neil Brooks	Clinton Carter
Tom Denny	Andrew Edds	Brian M. Haverlick	T.J. Humes
Andy Mack	Jay Maizel	Corey McConville	Trey Metz
Bill & Avis Moore	Aaron Otte	Tom Scanlan	William Sponaugle
Larry Tumblin	Scott Viera	Peter Weyrens	Jean White

**Table 5:**

Tim Akers	Bryan Bowman	Eileen Brennan-Porter	Marion Cooper
Kevin Daniels	Frank Filipy	Robert Greenlee	Galen hart
Jeremy Hartman	Latiffa Kerbal	Jesse Maines	Justin Marney
Dave Menton	Wendell Moseley	George Paine	Wes Porter
Brian Randolph	Rapidan Chapter Trout Unlimited	Andrew Riccobono	Joel Scalzo
Larry Sigmon	Charles Snodgrass	Rob Sticinski	Jack Train
Janice Zhuang			

**Table 6:**

Rob Arner	Jay Cohen	Anne Dahmer	Frank Filipy
Chapman Frazier	Michael Harmon	Amy Holstein	Robin Hoofnagle
Doug Jackson	Norma Kawecki	Laurie Kent	Stephen Lipps
Shannon Mahoney	Michael Mulloy	Camille Nelson	Charles Newton
Stan Oaks	Joe O'Kane	Pamela Park	Catherine Peltier
Steve Pilkerton	Scott Plein	Wes Porter	Robert Rosenthal
Larry Sigmon	Vince Staley	William Stein	Rhea Topping
Mark Wimbish	Barbara Woodward	Marcia Woolman	Nettie Zappala

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

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The following pages contain all changes made to the Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management during this action.

Regulation Section	Action	Change at Proposed Stage	Rationale	Changes since Proposed Stage	Rationale for Change
9VAC25-630-10. (Definitions)	Amended definitions	Agricultural storm water	Added the end-user and broker operations	None	Not Applicable
		Permittee	Added the end-user and broker	None	Not Applicable
		Poultry grower	Added grower	None	Not Applicable
		Poultry waste broker	Amended for clarity of who is a broker - Moved threshold of transferred poultry waste that triggers requirements to 9VAC25-630-60	None	Not Applicable
	Added definitions	Fact sheet	Added to clarify the purpose of the document	None	Not Applicable
		Organic source	Added to clarify the options for selecting the application rate in 9VAC25-630-80	None	Not Applicable
		Poultry waste end-user	Added to ensure clarity of the regulated entity	None	Not Applicable
		Poultry waste hauler	Added to ensure clarity of the regulated entity	None	Not Applicable
		Standard rate	Added to clarify the new term that is referenced in new section 9VAC25-630-80	None	Not Applicable
	9VAC25-630-20. (Purpose, delegation of authority)	Amended subsection A	Added management of poultry waste utilized or stored by poultry waste end-users or brokers	Added language to clarify	None
9VAC25-630-30. (Authorization to manage pollutants)	Amended subsection A	Added internal catch line (header) <u>Poultry Grower</u>	Added to clarify which subsection applies to a particular entity	None	Not Applicable
		Amended subdivision 3. changed § 3.1-726 to § 3.2-6002	Changed due to Virginia Administration Code-recodification	None	Not Applicable

Regulation Section	Action	Change at Proposed Stage	Rationale	Changes since Proposed Stage	Rationale for Change
9VAC25-630-30. (Authorization to manage pollutants) (continued)	Amended subsection A (continued)	Amended subdivision 6. removed the Department of Conservation and Recreation and added additional training requirements - once every five (1/5) years	Added additional training requirements for the poultry grower	None	Not Applicable
	Amended subsection B (moved language to new subsection C)	Added new language concerning the requirement of the end-user and broker to comply with the technical regulation or obtain coverage under the general permit. Added the end-user and broker to the authorization to manage pollutants governed by the general permit and added requirements similar to the growers (from subsection A.)	Added language to clarify who is authorized to manage pollutants	None	Not Applicable
	Added subsection C (contents are old subsection B)	Amended the responsibility to comply to include the end-user and broker	Amended language to clarify responsibility	None	Not Applicable
9VAC25-630-40. (Registration statement)	Amended subsection A	Added internal catch line (header) <u>Poultry Grower</u>	Added to clarify which subsection applies to a particular entity	None	Not Applicable
	Amended subdivision 9 (split subdivision into 2 subdivisions 9 & 10)	Split subdivision 9 - leaving DCR approved NMP attachment here and moved language (the nutrient management plan must be developed by a certified nmp writer) to subdivision 10	Amended to clarify the requirements of the permit applicant with regards to the attachments	None	Not Applicable

Regulation Section	Action	Change at Proposed Stage	Rationale	Changes since Proposed Stage	Rationale for Change
9VAC25-630-40. (Registration statement) <i>(continued)</i>	Amended subdivision 10 (moved language of old 10 to new subdivision 11)	Added language to registration statement that addresses the requirements of 9VAC25-630-30 A 4 (the nutrient management plan must be developed by a certified nutrient management plan writer)	Added to clarify the requirements of the permit applicant with regards to the attachments	Removed "which" replaced with "that" in this subdivision	Corrected grammatical error
	Added subdivision 11 (contents old subdivision 10)	Renumbered subsection 10 to 11, because of separating language from subdivision 9 into subdivision 10	Added new subsection due to clarifying language in previous subsections	None	Not Applicable
	Added subsection B	Added language for a registration statement for the end-user and broker	Added to allow for a separate registration statement	None	Not Applicable
9VAC25-630-50 (Contents of the general permit)	Amended language in opening paragraph	Added the poultry waste end-user or poultry waste broker	Added to allow for coverage under the general permit if required	None	Not Applicable
	Amended permit title	Removed "at confined poultry feeding operations"	Amended to broaden permit for the poultry waste end-user and poultry waste broker operations	None	Not Applicable
	Amended language in the paragraphs above Part I	Added language to cover the poultry waste end-user and broker	Added to conform with the amendments in 9VAC25-630-30	None	Not Applicable
	Amended Part I title	Amended Part I title to cover pollutant management and monitoring requirements for confined poultry feeding operations	Clarify the parts of the permit with which a particular entity must comply	None	Not Applicable
	Amended Subsection B, subdivision 4	Amended language concerning the conditions that must be met when transferring poultry waste off-site.	Clarify the language.	None	Not Applicable

Regulation Section	Action	Change at Proposed Stage	Rationale	Changes since Proposed Stage	Rationale for Change
9VAC25-630-50 (Contents of the general permit) <i>(continued)</i>	Amended Subsection B, subdivision 4 <i>(continued)</i>	Changed transfer tonnage threshold which triggers recordkeeping to five (5) tons	Lowered threshold to facilitate more effective poultry waste transfer data retrieval and analysis	Removed (throughout entire subdivision 4) threshold tonnage change: threshold will remain 10 tons	It was determined that lowering the threshold will not provide significant additional water quality protection than the original threshold of 10 tons
		Removed the detailed language about the fact sheet (definition has been added to 9VAC25-630-10)	Removed since Fact sheet definition was added in 9VAC25-630-10	None	Not Applicable
		Itemized the records required when transferring the poultry waste by: What the grower must provide (to the particular entity) and record	Rearranged the recordkeeping items to clarify the grower's requirements	None	Not Applicable
		Removed the end-user and broker recordkeeping requirements	Recordkeeping requirements were placed in amended section 9VAC25-630-60 and in new section 9VAC25-630-70	None	Not Applicable
	Amended subsection B, subdivision 4c:	Added " <u>if known</u> " to the recordkeeping item (2)	There was concern that if the grower or end-user did not know the name of the downstream waterbody that the grower would be penalized. It is recognized that the grower can only document what the end-user provides thus the language change	None	Not Applicable

Regulation Section	Action	Change at Proposed Stage	Rationale	Changes since Proposed Stage	Rationale for Change
9VAC25-630-50 (Contents of the general permit) <i>(continued)</i>	Amended subsection B, subdivision 4c <i>(continued)</i>	Added (3) to the recordkeeping items: <u>(3) If the waste is utilized for land application, if known indicate the method used to determine the land application rates i.e.: phosphorus crop removal, standard rate, soil test recommendations, or a nutrient management plan.</u>	This information will facilitate more effective poultry waste transfer data analysis	Removed record-keeping item (3) and renumbered the record-keeping items	It was determined that this information will not provide the agency with conclusive data to determine actual nutrient reduction, so it is not necessary to require the information to be recorded
	Added subsection B, subdivision 4d.	Added annual poultry waste transfer reporting requirements for growers	Annual reporting will facilitate more effective poultry waste transfer data retrieval and analysis	Removed the annual reporting requirement from the subdivision	It was determined that effective data retrieval and analysis can be achieved without adding an annual reporting requirement since the data will continue to be collected during the annual inspection and can be requested by staff at anytime
	Amended subsection B, subdivision 12	Amended language from a narrative format to an itemized list	Amended for Clarity of the requirements	None	Not Applicable
	Amended subsection B, subdivision 13	Added a frequency once every five years (1/5) to the training requirement for the grower	Additional training will assist in compliance with the permit including poultry waste transfers and land application recordkeeping; and poultry waste transfer reporting	None	Not Applicable
	Amended subsection B, subdivision 5.	Changed § 3.1-726 to § 3.2-6002	Changed due to Virginia Administration Code-recodification	None	Not Applicable

Regulation Section	Action	Change at Proposed Stage	Rationale	Changes since Proposed Stage	Rationale for Change
9VAC25-630-50 (Contents of the general permit) <i>(continued)</i>	<b>NEW</b> Added Part III	Added Part III - permit requirements for poultry waste end-users and poultry waste brokers (similar to Part I - for the grower) Requirements include: soils and waste monitoring, nutrient management plan, storage conditions, poultry waste transfer recordkeeping and reporting, land application recordkeeping, and land application buffer zone conditions	Added permit Part III to detail permit requirements specific to poultry waste end-users and poultry waste brokers	Removed threshold tonnage change: threshold will remain ten (10) tons; removed record-keeping item (7) and renumbered the record-keeping items; removed annual reporting requirement	Removed same requirements that were removed from Part I of permit (for growers) in order to remain consistent throughout the permit
9VAC25-630-60 (Tracking and accounting requirements for poultry waste brokers)	Amended subsection A	Amended to add requirements that the poultry waste broker register with the DEQ prior to transferring poultry waste	Added to assist the DEQ in maintaining records regarding poultry waste transfers as the department is mandated	None	Not Applicable
	Amended subsection B and C	Changed transfer tonnage threshold which triggers recordkeeping to five (5) tons	Lowered threshold to facilitate more effective poultry waste transfer data retrieval and analysis	Removed the threshold tonnage change: threshold will remain 10 tons	It was determined that lowering the threshold will not provide significant additional water quality protection than the original threshold of 10 tons
		Reformatted the recordkeeping requirements into an itemized list, broke it down by who and what	Rearranged the recordkeeping items to clarify the broker's requirements	None	Not Applicable

Regulation Section	Action	Change at Proposed Stage	Rationale	Changes since Proposed Stage	Rationale for Change	
9VAC25-630-60 (Tracking and accounting requirements for poultry waste brokers) (continued)	Amended subsection B and C (continued)	Added h. to the recordkeeping items: <u>h. If the waste is utilized for land application, if known indicate the method used to determine the land application rates i.e.: phosphorus crop removal, standard rate, soil test recommendations, or a nutrient management plan.</u>	This information will facilitate more effective poultry waste transfer data analysis	Removed record-keeping item h. and renumbered the record-keeping items	It was determined that this information will not provide the agency with conclusive data to determine actual nutrient reduction, so it is not necessary to require the information to be recorded	
	Amended subsection D	Amended to update the subsections pertinent to the reporting and added on a form approved by the department	Amended to clarify the reporting requirements- Added the approved form to assist the broker for annual reporting and DEQ in obtaining consistent data	None	Not Applicable	
	Added subsections	Added subsection E: Addresses requirements for waste sampling of waste from two or more sources that are commingled	Added subsection E: Addresses requirements for waste sampling of waste from two or more sources that are commingled	Addition stipulates requirements for the waste sampling to ensure a more accurate nutrient analysis of poultry waste	None	Not Applicable
		Added subsection F: Addresses requirements of the broker if he land applies waste for the end-user	Added subsection F: Addresses requirements of the broker if he land applies waste for the end-user	Addition ensures the end-user is provided with the information they are required to maintain according to new section 9VAC25-630-70	None	Not Applicable
		Added subsection G: Addresses training requirements of the broker	Added subsection G: Addresses training requirements of the broker	Additional training will assist in compliance with the requirements of this technical regulation 9VAC25-630-60: including poultry waste transfers and poultry waste transfer reporting	None	Not Applicable

Regulation Section	Action	Change at Proposed Stage	Rationale	Changes since Proposed Stage	Rationale for Change
9VAC25-630-60 (Tracking and accounting requirements for poultry waste brokers) <i>(continued)</i>	Added subsections <i>(continued)</i>	Added subsection H: Addresses DEQ authority to inspect	Clarifies DEQ authority to inspect	None	Not Applicable
<b>NEW</b> 9VAC25-630-70 (Tracking and accounting requirements for poultry waste end-users)	Added new section	Added new section and requirements based on the transfer tonnage threshold (lowered from 10 to five (5) tons): Added recordkeeping items including (item d. <u>If the waste is utilized for land application, if known indicate the method used to determine the land application rates i.e.; phosphorus crop removal, standard rate, soil test recommendations, or a nutrient management plan.</u> ) Added clarification of DEQ authority to inspect	Added recordkeeping items here to clarify the end-user's requirements and responsibilities with regards to recordkeeping which is triggered by the transfer tonnage threshold (lowered from 10 to five (5) tons)	Removed the threshold tonnage change: threshold will remain 10 tons; removed record-keeping item d. and renumbered the record-keeping items	It was determined that lowering the threshold will not provide significant additional water quality protection than the original threshold of 10 tons It was determined that this information will not provide the agency with conclusive data to determine actual nutrient reduction, so it is not necessary to require the information to be recorded
<b>NEW</b> 9VAC25-630-80. (Utilization and storage requirements for transferred poultry waste)	Added new section	Added new section: Addresses requirements regarding the land application and storage of transferred poultry waste for both the end-user and broker; including storage requirements, methods to determine land application rates, buffer requirements, and land application timing. Added clarification of DEQ authority to inspect	Added utilization and storage requirements here to clarify the end-user's and broker's requirements and responsibilities; these requirements are not triggered by the transfer tonnage threshold	None	Not Applicable

Regulation Section	Action	Change at Proposed Stage	Rationale	Changes since Proposed Stage	Rationale for Change
FORMS (9VAC25-630)	Amended section to reflect the changes made in 9VAC25-630-40 Added and amended forms	Amended: Registration Statement, VPA General Permit for Poultry Waste Management for <u>Poultry Growers</u> , RS <u>VPG2 (rev. 12/09)</u> to allow for a separate grower form. Fixed the typo in the form name. Amended to reflect the changes made in 9VAC25-630-40. Added: Registration Statement, VPA General Permit for Poultry Waste Management for Poultry Waste End-Users and Brokers, RS VPG2 (rev. 12/09)	Amended to reflect the changes made in 9VAC25-630-40 regarding attachments required to accompany permit applications and NMP requirements  Created separate form for end-user and broker to avoid complicating the grower registration statement	None	Not Applicable

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The regulatory requirements will apply to small businesses (end-users) that utilize poultry waste as fertilizer. In order to minimize the impact on small businesses and reduce regulatory burden, the proposed amendments allow for the end-user of poultry waste to remain covered under technical requirements in the regulation which include adhering to appropriate waste storage and land application requirements. So long as the end-user adheres to these technical requirements permit coverage will not be deemed necessary.

**Family impact**

*Assess the impact of this regulatory action on the institution of the family and family stability.*

It is not anticipated the final amendments to this regulation will have any direct impacts on the family and family stability. However; there may be a minor impact to a family that farms and is an end user of poultry litter in that they must keep records regarding the poultry waste utilization.